

KFN

S082

D17

1911

C.1

CORNELL UNIVERSITY LAW LIBRARY.

THE GIFT OF

John Howell.

Ithaca.

Date. *Oct. 25, 1919.*

Cornell University Library
KFN5082.D17 1911

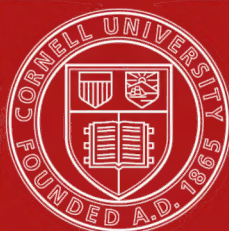
Bar examinations (New York) and courses



3 1924 021 906 619

law





Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

BAR EXAMINATIONS

(NEW YORK)

AND

COURSES OF LAW STUDY

CONTAINING THE

STATUTES AND RULES OF COURT REGULATING ADMISSION
TO THE BAR IN NEW YORK STATE AND FORMS AND
INSTRUCTIONS FOR THE BAR EXAMINATIONS AND
SOME OF THE QUESTIONS, WITH THE ANSWERS
THERE TO, HERETOFORE USED BY THE NEW
YORK STATE BOARD OF LAW EXAMINERS,
WITH ADDITIONAL QUESTIONS ON
THE NEW YORK CODE OF CIVIL
PROCEDURE; ALSO COURSES OF
LAW STUDY SUITABLE FOR
THE USE OF CLERKS
IN LAW OFFICES.

FRANKLIN M. DANAHER

of the Albany County Bar

FIFTH EDITION

ALBANY
J. B. LYON COMPANY, PRINTERS

1911

B10406

COPYRIGHT, 1904,
BY FRANKLIN M. DANAHER.

COPYRIGHT, 1905,
BY FRANKLIN M. DANAHER.

COPYRIGHT, 1907,
BY FRANKLIN M. DANAHER.

COPYRIGHT, 1909,
BY FRANKLIN M. DANAHER.

COPYRIGHT, 1911,
BY FRANKLIN M. DANAHER.

PRINTERS AND BINDERS
ALBANY, N. Y.
J. B. LYON COMPANY



TO

HON. WILLIAM P. GOODELLE

AND

FRANK SULLIVAN SMITH, ESQ.,

MEMBERS OF THE NEW YORK STATE BOARD OF LAW EXAMINERS

*In recognition of their time and labor given out of a
busy professional life in successful aid of
higher education at the bar.*

NOTICE TO FIFTH EDITION.

The continued demand for this book, which makes us hope that it has been of some service to aspirants for admission to the Bar, justifies the issuing of another edition which is coincident with the promulgation of amendments to the rules regulating admission to the Bar in this State adopted by the Court of Appeals on May 17, 1911, taking effect July 1, 1911.

The changes in the rules are for the betterment of conditions at the Bar and are intended to raise the standards of intelligence and morals thereat so as to enable it to retain its historic status as the first of the learned professions. The well-considered action of the Court of Appeals in strengthening them, as it has, but along conservative lines, so as to bar none who, being worthy, desires to become admitted to the practice of the law, shows that the Bar builded well when it placed admission to practice, that most important factor in its well-being and of so great public importance within the jurisdiction of that Court.

It will serve no purpose to explain or justify the changes. They were asked for by the profession and granted by the Court, and it will be sufficient to call them generally to the attention of those who seek admission to the Bar in New York on examination.

No changes have been made in the preliminary educational qualifications. It is still the rule that no person can begin the study of the law unless he is eighteen years of age, and has earned a law student's certificate or is a graduate of a college or university. Concerning the particulars of both of those latter requirements application should be made to the Commissioner of Education, Capitol, Albany, N. Y.

Applicants who are not graduates of a college or university must now study law for a period of four years. Such an applicant may pursue his course of law study wholly by serv-

ing a clerkship in the office of a practicing attorney; or partly by serving such clerkship or partly by attending a law school; but every such applicant must serve such clerkship for a period of at least one year continuously either before examination by the State Board of Law Examiners or after such examination and prior to admission to the Bar.

Applicants who are graduates of a college or university with a registered degree must study law for a period of three years subsequent to such graduation. Such an applicant must pursue his course of law study wholly by serving a clerkship in the office of a practicing attorney; or wholly by attending a law school; or partly by serving such clerkship and partly by attending a law school.

Applicants who apply for admission on examination predicated upon having been admitted to the Bar of another state or country must have remained in such state or country as a practicing attorney for not less than three years, and they must study law in this state, in the manner required by the rules, for one year thereafter.

The allowance of law school time is regulated admirably and in a way intended to put an end to many unlawful practices which obtained in the manner of the allowance and certification of time spent in attendance upon some of the law schools. After July 1, 1911, the time of study allowed in a law school must be proved by the certificate of the teacher or president of the faculty under whose instruction the person has studied, under the seal of the school, if such there be, in addition to the affidavit of the applicant, which must also state the age at which the applicant began his attendance at such law school. Said certificate and affidavit must also show that the law school prescribes the course of instruction contemplated by the rules regulating admissions to the Bar, adopted May 17, 1911, and each shall also contain the statement that said applicant took the prescribed course of instruction required at said school for the degree of Bachelor of Laws while in attendance thereat, and *bona fide* took and successfully passed all examinations in all the subjects required for said degree during such period of attendance, in each case specifying the subjects in which said applicant took

and passed his examinations as aforesaid, which proof must be satisfactory to the State Board of Law Examiners.

Applicants are now required to pass a satisfactory examination in the Canons of Ethics adopted by the American Bar Association and the New York State Bar Association, and an applicant who has failed to pass one examination, either on his entire paper or in either of the two groups into which the subjects of examination are divided as set forth in the rules of the State Board of Law Examiners, cannot again be examined until at least four months after such failure.

We have added to the five hundred and fifty general questions one hundred additional Code questions. Our opinion concerning the value of any so-called "Quiz" on the New York Code of Civil Procedure is printed *infra* in connection therewith. The Code questions were intended in the main to call to the attention of the student a few of the most important and more generally used sections of the Code as an aid to the study of the book itself. They may help; we hope they will.

We reiterate; this book is neither official nor semi-official, and the State Board of Law Examiners is not bound by anything therein contained.

We are indebted to Leonard M. Benjamin, Esq., of the Albany County Bar for much valuable assistance in the preparation of this edition.

ALBANY, N. Y., *May* 22, 1911.

F. M. D.

BAR EXAMINATIONS.

PREPARATION FOR BAR EXAMINATIONS.

Whatever may be the popular opinion concerning examinations in general as a test for any purpose, or as a condition of admission to a profession or occupation, or what may be the opinion in particular of applicants for admission to the Bar on the same subject, the fact is patent, that as to the latter a condition and not a theory confronts them in that regard, and that sooner or later they must pass the ordeal of an examination as to their knowledge and capacity in the law, as a condition precedent to their admission to the practice thereof, and their entrance upon their life work. So, it may be said, that all their labor, during many years of preparation, is directed toward that absolute certainty, which they approach with varying feelings of fear or confidence, depending much upon temperament, a knowledge of deficiencies, or upon that courage which comes from thorough preparation, the result of industry and method in their preparatory study.

If we were asked what in our opinion produced the best results in law study, we should thrice repeat, as did the ancient Athenian, who said that "action, action, action," was the key to success in oratory, that method, method, method is the only possible way of digging below the surface of the world of law to unearth its treasures, or to make the slightest impression upon its ever-growing mass; a ceaseless and progressive growth that is rapidly carrying dismay and despair to the hearts of those who realize its stupendous and unconquerable results. By method we mean scientific direction in what and how and when to study, a direction which cannot be obtained, however, outside of the walls of a properly constituted School of Law. To those, therefore, who are struggling to obtain some knowledge of the law while serving a clerkship in a law office we say, do not stand a moment on the order of your going, but matriculate at once in some law college; the advantages which you will gain thereby will repay you many fold for your possible sacrifices in so doing.

We have written and said much upon the necessity of law-school training as a preparation for the Bar under modern conditions existing in law offices, and concerning the absolute waste of valuable time and endeavor to obtain the required qualifications while serving a law clerkship therein; we will say nothing further on the subject herein.

To those who cannot, by reason of their environment, attend upon a law school we recommend a careful following of the "Courses of Law Study," quasi law college curriculums prepared at the request of the New York State Board of Law Examiners, for their benefit, and the good of the profession, by learned professors in the science, which are printed herewith.

Bar examiners are not educators and handle only the supposed-to-be-finished product of the schools and offices; neither are they, as a rule, competent to lay out courses of study for aspiring applicants for admission, and we make no pretense in that regard. It is their duty to test the capacity of those who come before them for certificates as to their competency in the law; and the good they accomplish to the State, to the profession, and to the possible clients, in having a fair yet sufficient standard, is the justification of their existence as such, and to some extent their only reward. Yet, if an applicant studies only for the purpose of passing his bar examination and is content with that meagre satisfaction, and does not look over and beyond that slight stumbling block in his path, to the honors and compensations of his chosen profession, he is indeed short sighted and fails in his duty to himself, to his profession and to his future clients and enters upon the same but poorly fitted for its responsibilities and great labors. He will not benefit to the limit of its possibilities and will be ever but a hewer of wood and a drawer of water therein, many of whom are in the profession to-day to its disadvantage. Competition is keen in the practice of the law, and more so at the bottom of the ladder, down in the depths among the weak, than it is on the top, among the strong, and where each will be depends entirely upon himself.

To keep abreast with the necessary learning in the law is a labor as constant and as wearying as that of Sisyphus. In

its study there is no such thing as rest; he who does not advance therein each day, of necessity recedes. It is as unstable as the restless sea, and constantly developing to meet the ever-changing necessities of our growing civilization. Courts and Legislatures, including those of the United States, are ever making and unmaking law, and amending, abridging, distinguishing, differentiating and limiting the same, so that to-day he who can master thoroughly any one of its great subdivision, has accomplished that which but few have done. The future of the practice must be one of specialization; and as difficult as it may be in the beginning to obtain recognition therein, a student should select a specific branch of the law and make himself proficient therein beyond the average of his fellow practitioners. His special learning will sooner or later be recognized. But he should not neglect the primary essentials of constant, intelligent and methodical study and untiring industry in the broad fields of general law, otherwise he will reap neither professional nor pecuniary rewards in his chosen sphere of legal activity.

The practice of the law as a means of livelihood has been revolutionized within the past decade, and the economic changes of the century past have not left it unscathed. Trusts which have imperially benefited the few, by reason of their many consolidations of possible clients, have undone many in the profession. Corporations now virtually practice law; they draw wills, probate them, and act as executors and trustees, formerly the family lawyer's prerogative; they sell property and search and guarantee titles; they incorporate, and, when necessary, will furnish their clients with an office and a ready-made board of directors; they collect bills through the pressure of unincorporated mercantile agencies and the terrorisms of unfavorable financial reports; they advertise to prepare briefs, in fact, what are they not doing to the financial and professional detriment of the "average" lawyer?

We are not pessimistic; the only way to avoid a danger is to know it, and what we have said above is but to call a halt in the enthusiasm of the average student in law, and to point out a few of the pitfalls which impede his path to the fatuous fame and wealth of the profession, and to make him realize that if his studies thus far have been but for the pur-

pose of passing his bar examinations that he will have much to grieve for in a future of disappointment that surely awaits him, unless he changes his present ideas as to the requisites of learning and character necessary for success in the practice of the law.

THE SUBJECTS OF EXAMINATION.

The subjects of examination are divided into two groups, viz.: Group One, "Pleading, and Practice and Evidence," and Group Two, "Substantive Law," which latter includes, Real Property, Contracts, Partnership, Negotiable Paper, Principal and Agent, Principal and Surety, Insurance, Bailments, Sales, Criminal Law, Torts, Wills and Administration, Equity, Corporations, Domestic Relations, Legal Ethics and the Constitution of New York State. Each applicant will be required to obtain 66 $\frac{2}{3}$ per cent. of correctness in each Group and on his entire paper to entitle him to a certificate from the Board. If he obtains the required standard in either Group and not on his entire paper, he will receive a pass card for the Group which he passes and will not be required to be re-examined therein. He will be re-examined in the Group in which he failed or on the entire paper, if he failed in both Groups at any subsequent examination for which he is eligible and for which he gives notice as required by the rules. The percentage for passing is calculated upon the entire number of questions contained in each Group, so that strength in some subjects of the Group may compensate for weakness in other subjects thereof.

All questions are of equal value except those in Pleading and Practice which are rated at but half values for the present. Applicants display a lamentable lack of knowledge of Pleading and Practice and Evidence and the Board intends to hold them to a strict accountability on those important subjects in the future; they must be thoroughly studied and fairly mastered by all who are certified hereafter for admission. Each answer is read and adjudged with all the care that the importance of the objects and purposes of the examinations demand. The good that is in it is weighed

and credited, and the errors therein penalized. A correct answer with bad reasoning receives some credit, a wrong answer is without grace.

The test is the applicant's competency to advise clients; and if he advises them wrong, what consolation is it to his unfortunate victim, that his lawyer had reasons therefor which he deemed good and sufficient, but which, however, were without merit and bad in law?

HOW TO TAKE THE EXAMINATION.

The examination consists of fifty questions, twenty-five in a morning session of four hours, and twenty-five in an afternoon session of the same length. There is an hour intermission between the sessions.

It must be observed that in four hours there are 240 minutes, which gives the applicant an average of about nine minutes in which to answer each question, an important factor to be taken into consideration in the distribution of his time and in the problem of his being able to finish the examination within the time limit, for a question not answered is a question missed beyond hope of redemption.

The test is the applicant's ability to advise clients according to New York Law, so the questions are mainly such as would be put to a lawyer in his office by a client, and consist of concise statements of facts, which may arise in the affairs of life, involving propositions of law, and the applicant is required to state what course of procedure he would follow, or what would be his advice to his clients under the circumstances narrated. In addition, questions of procedure and evidence are submitted in the way they ordinarily arise in the actual trial of cases in court, and he is required to solve them substantially in the same way and as promptly.

It will be seen therefore that the examination is practical and not theoretical, and being based exclusively upon the rulings of the courts and the statutes of the State in which he is applying for admission, his knowledge must be exact and according to New York standards. The laws of our sister States are as foreign to us as are the laws of England,

so under the practical requirements of the New York State system of bar examinations it does not stand an applicant in good stead to know what the law of another State or country is on the particular question asked, or what the law used to be or should be, provided he does not know the law as it is.

Answers that are not correct, according to New York Law, are not credited, for it would be but little satisfaction to an unfortunate client who has been damnified by wrong advice, to be consoled by his incompetent legal adviser with the statement that that which he said and his client followed was at least good law in Lord Coke's time, or in Massachusetts now, or should be the rule any way; we do not care to encourage such post-mortem consolation.

The test of knowledge is the living principles of the law as it obtains in New York to-day (we give no guarantees for the future) and that is the law which applicants should study and learn, who intend to practice their profession in this State.

The examination being practical, the State Board of Law Examiners wants the answers to be likewise, and not theoretical. They should be concise and to the point. The experience of the Board gives its members facility in determining the extent of the applicant's knowledge from the character of his answer, and no answer, if correct, can be too short. Ten to fifteen lines is ample for all purposes, beyond that there is danger, especially if there be error, for that grows in geometrical proportion as the answer is heedlessly spun out. *Write your answers first and give your reasons thereafter.* That is a piece of advice of practical importance. It is far easier, admits of better work, and produces better results to endeavor to sustain a given proposition than it does to try to reach a conclusion after a long argument. The first method tends to logical conciseness, the latter to wordy diffuseness, in addition to its being the more laborious and a greater consumer of the applicant's limited time, to say nothing of the patience and good nature of the examiners called upon to read what he has unnecessarily written.

Do not give information that is not asked for. All that is in the examiner's mind and all that you are called upon to consider is what is written in the question before you. It contains every necessary element for a proper and correct answer, and what is not therein stated is not involved, unless, perhaps, it be a legal principle necessarily following from the circumstances narrated. The examiners ask you to give your knowledge on the precise question put before you. If they want anything else they will ask for it, so perchance if the question be in Bailments, and you are asked what particular feature of that law is involved in the particular question, do not roam at will over the entire range of the subject, and tell, with much display of pseudo learning, all you think you know about Bailments in general, and their variations and fine differences in particular. You are not asked, nor required nor expected to do so. You are liable by so doing, to lose sight of the point in the question and thus fail to answer it, or when you come to it, you may not have time to do it justice. In addition, if you go wrong, the more you write the greater will be your offense, and you may be justly penalized for incorrect answers that you were not asked to give.

Read the questions carefully, and endeavor to understand what is involved therein. The language used is your only guide; it has been carefully considered and the words are used in their technical sense. Find first the principle of law to which it relates, whether to Contracts, Bailments, or other subject, and then apply the facts thereto, and write your answer. There are no "catch" questions, they mean what they say, so do not dig beneath the surface for some occult meaning, if you do, you are apt to go astray.

Do not answer in the alternative unless asked to do so, nor "straddle." Answer the questions squarely as you understand them and do not endeavor to evade their requirements. The examiners have sufficient experience to know from the answers given whether the applicant knows what he is writing about or not, and it is useless to try to deceive them by shifty, noncommittal, or evasive answers.

THE QUESTIONS.

A book of "Questions and Answers" or "Quiz Book" so called, can be of educational value, if properly used, otherwise, it is a delusion, a snare, and a detriment, and this book is no exception to the rule. If it be purchased by those seeking to be admitted to the Bar, without possessing the necessary qualifications to be a credit either to themselves or to the profession, as a "cram," or in the hope that in the near future, the questions heretofore asked by the examiners and herein printed will be repeated, they will be sadly disappointed, for if these questions or their variants are used again, it will be through inadvertence, and not for want of time or disposition to invent new problems for the benefit of those who apply hereafter.

Books of "Questions and Answers" are not to be encouraged, and it was with great misgivings that the Board allowed us to publish this one, but it was felt that as such books would be and are used quite extensively, and that as many of its questions, full of error, had been surreptitiously published that this book, if its use in a proper way could be directed, might be of some educational value, and it is issued from that point of view only.

We give eleven complete question papers, or five hundred and fifty of the questions heretofore used by the State Board of Law Examiners, and the answers thereto, as the writer understands them, and he is alone responsible for their correctness. In addition there are one hundred practical Code questions, answered in the language of the Code, which we hope may be of some use to the student.

Six hundred and fifty questions may not be many, but they are sufficient for the purposes for which this book is issued. It is not a *Vade Mecum*, neither is it an Encyclopedia, nor intended to be a substitute for any law book or other course of study. The questions are published to give to the student a fair, general idea of the quality of the questions used by the State Board of Law Examiners and to afford him an opportunity of practically testing his knowledge of the law

thereby, and to direct his attention to his deficiencies and to new channels of research. If he will study, digest, and correctly answer the questions given, he will be able to read his title clear to pass any fair and practical examination in law that any Board of Law Examiners, no matter how constituted, can place before him.

We have made our answers concise and have cited but one or two cases in support of each, for the reason that it is not within our intention to write an essay nor to attempt to exhaust the law on the various questions propounded. We have selected an authority which upholds each answer given, merely as a starting point for that further and independent investigation by the student, which we deem essential to the proper use of the book and to get value therefrom.

We desired also to suggest the length of an answer sufficient to satisfy the examiners, if otherwise correct.

This book should be used as would an arithmetic or an algebra. The student must not imagine that he can memorize the questions and the answers thereto and retain them correctly. The technicalities and refinements of the law will not permit it. The questions demand construction, such as statutes require, and it is physically and mentally impossible to correctly preserve the meaning and legal relation of the words for use upon a future examination. Such a method of study is not only unwise, but is also beyond power. The loss of a single word, or the substitution of another, or its displacement in a sentence may entirely change the legal meaning and effect of the question, and require a different answer than the one memorized. The student will use his memory to recall words and not principles, and error will invariably result therefrom. No person would endeavor to learn a problem in higher mathematics by memorizing the figures nor without working out the processes, yet some students imagine they can learn law from a book of "Questions and Answers" by following similar methods.

Our advice is to treat each question as one would a problem in mathematics, and solve it in writing. Read a question and write on it as you would be compelled to do at an

examination for ten minutes, including the time taken to comprehend it, and then compare what has been written with the answer given. That will give the student some idea of his proficiency. But do not stop at that; the subject having been opened up, it should be pursued to a finish. Use the citation given as a starting point for an investigation of the entire subject. Follow it through all its subsequent career; find where it has been cited, and read those cases; read the other cases cited in the opinions, no matter how far they may go back; hunt for the principle in encyclopedias and text-books, and brief what you find. If one desires to understand a statute, or an opinion, and to retain it in memory, he must digest it in writing. The labor of the process itself will help to impress the learning of the principle upon recollection as no mere reading of it can possibly do. Make a written brief on as many of the given questions as possible; the applicant will then obtain benefits in the only way they can be had from any book of "Questions and Answers," no matter by whom compiled or written.

Albany, June 1, 1911.

FRANKLIN M. DANAHER.

QUESTIONS

STATE BOARD OF LAW EXAMINERS

Examination of Applicants

FOR

ADMISSION TO PRACTICE

AS

ATTORNEYS AND COUNSELLORS-AT-LAW

HELD IN AND FOR THE

STATE OF NEW YORK

WILLIAM P. GOODELLE

FRANK SULLIVAN SMITH

FRANKLIN M. DANAHER

State Board of Law Examiners

EXAMINATION RULES.

(Which must be read and followed.)

1. Each applicant must commence his answer paper with answers to the following questions:

- (a) What is your name, age, residence and post-office address?
- (b) Where and with whom have you pursued your legal studies?
- (c) What educational advantages did you have before beginning the study of law?

2. He must write the answers of each group under the group headings as the same appear on the printed question paper, commencing "Group 2" on a separate sheet, but paged consecutively. The answers, when completed, must follow the order of the questions as printed. Do not copy the questions, but write the number of each question upon the margin of the answer paper opposite the answer. Write only on one side of the paper.

3. Give your reasons for each answer. Answer the questions first, then give your reasons. Do not give information that is not asked for. A question not answered is a question missed.

4. The examination will be held in two sessions of four hours each, except that in re-examinations in "Group 1" and in the morning session re-examination in "Group 2," the time limit will be two hours; no further time will be given. No applicant shall enter the examination more than half an hour late, and no applicant shall leave the room within half an hour after the distribution of the examination papers, nor in any case until he shall have returned the same to the examiner in charge.

5. As soon as an applicant has completed his answers he will tear apart the sheets of paper on which they are written and write his name and the number of the page on each separate sheet thereof; he will then fasten the sheets together in consecutive order with the brass fastener furnished for that purpose by inserting the same through the upper left-hand corner of the paper as viewed, also fastening thereby and thereto in front the printed question paper furnished to him, which must be returned to the examiner in charge, with and as part of his answer paper, for unless this is done the Board will not pass on his application. Before handing in his answers, the applicant will fold the same as law papers are usually folded and indorse thereon his name and the words "..... morning session," or "..... afternoon session," as the case may be, inserting in the blank space the name of the place where the examination is held. Applicants re-examined in Groups Nos. 1 or 2 will, in addition, indorse thereon their group number.

RULE VI.

(State Board of Law Examiners.)

The Board will divide the subjects of examination into two Groups, as follows: Group One, Pleading and Practice and Evidence; Group Two, Substantive Law. Each applicant will be required to obtain the requisite standard in both groups and on his entire paper to entitle him to a certificate from the Board. If he obtains the required standard in either Group and not on his entire paper he will receive a pass card for the Group which he passes and will not be required to be re-examined therein. He will be re-examined in the Group in which he failed or on the entire paper if he failed in both groups at any subsequent examination for which he is eligible and for which he gives notice as required by these rules. (Amended June 28, 1910.)

EXAMINATION PAPER.

No. 1.

FORENOON—FOUR HOURS.

1.

1. Draw complaint, without verification, for an action for assault and battery in the County Court, demanding the full amount of damages recoverable in that Court.

2.

2. A brought an action against B for trespass, claiming that B entered upon his premises and polluted a well of water. B answered by a general denial, and also set up affirmatively that the title to the premises was in C. On the trial A proved his possession, the trespass, and his damages, and rested, proving no title in himself. B offered no evidence except he established title in C and rested. Evidence closed. Judgment for whom and why?

3.

3. Plaintiff's complaint, in an action at law, alleged two independent causes of action which were separately stated. The defendant by answer joined issue upon the facts alleged in both causes of action. On the trial the Court upon the whole evidence directed a verdict for the defendant, both on the law and facts, on the first count. On the second count, the jury found a verdict for the plaintiff of over \$50. Who is entitled to costs and why?

4.

4. A brought an action against B and C jointly for assault and battery. The complaint stated a cause of action against

both, and the proof, on the trial, sustained the allegations of the complaint. Both B and C appeared and defended the action. The jury found a verdict for "\$1,000 for plaintiff," but the prayer for relief, through inadvertence, demanded judgment only against B, who was irresponsible. C was responsible. Against whom could A lawfully have entered judgment and why?

5.

5. Enumerate concisely, in chronological order, (doing nothing more) the necessary steps to foreclose a real estate mortgage by action, where none of the defendants has appeared.

6.

6. The law has taken hold of B and he is serving a term in jail. You desire his testimony on the trial of an important case. How will you obtain it?

7.

7. A conveyed by warranty deed to B ten acres of land surrounded on three sides by A's remaining land and on the other side by land of C. B had no way of getting to or from his purchase of ten acres, except to cross A's or C's land. B claimed an easement *by necessity* to a right of way to and from his ten acres across A's land, to which A reluctantly consented. B, after using the same for thirty years, bought C's land: thereupon A fenced B's way across his premises and forbade him longer using it. Litigation is threatened. What are the rights and obligations of A and B in the contention? State your reasons.

8.

8. July 15th, A sold and conveyed by deed his farm of five hundred acres to B without reservation. There were fifty acres of meadow, twenty of which had been cut and the hay was being cured on the ground from which it was cut. Fifty cords of wood that had been cut from the woodland were corded in the woods. One thousand cedar posts were piled on the premises, and five hundred more were distributed along the fences to replace those which had become decayed or broken therein. A dispute arises between A and B as to

whom the specified property belongs. Each claims to own all. What do you say?

8.

9. A and B were the owners of real estate as tenants in common. B conveyed his interest to C, wife of A. A and C at once entered upon and occupied the entire premises together, and had a child born unto them. A died intestate, leaving C, his widow, and the child, him surviving. What are the respective interests of C and the child in and to the *entire* property formerly owned by A and B?

10.

10. On January 2, 1894, A became indebted to B for rent on a lease, not under seal, in the sum of \$500. No payments of either principal or interest were thereafter made thereon. In June, 1901, B presented the lease to A in the presence of two witnesses and demanded payment of the amount due thereon. A said to B, "I acknowledge that lease and that there is \$500 and interest honestly due thereon, which I promise to pay to you in three months." He has not done so, and B consults you. What would be your advice under the circumstances?

11.

11. A entered into the employ of B as an expert accountant under an agreement to remain for one year at the annual salary of \$2,400, payable monthly. After working for six months, A was offered employment by C at the rate of \$4,000 a year. He stated the facts to B and notified him of his intention to quit at once, unless B paid him at the same rate. B said, "I cannot afford to let you go and under the circumstances I will pay you the additional compensation at the end of your term if you will remain with me." A said, "He would." At the expiration of A's term, B discharged him and also refused to pay him the additional compensation as he had agreed to, as above. A now consults you. What would be your advice?

12.

➤ 12. A and B formed a limited partnership under the statute. A was the special partner. Each contributed to the

capital of the new firm \$40,000 in cash. The business did not prosper and thereafter the firm failed, owing \$100,000 to firm creditors, over and above all assets. State the respective liabilities of A and B under the circumstances disclosed.

13.

13. A and B were copartners in trade. A died. What are the respective rights of A's representatives and B under the circumstances?

14.

14. On January 10, 1900, Richard Roe, for value, duly executed and delivered to John Doe, a paper in the form following:

ALBANY, N. Y., *January* 10, 1900.

For value received I promise to pay to the order of John Doe \$1,000 on his twenty-first birthday, with interest.

(Signed)

RICHARD ROE.

John Doe indorsed the instrument and transferred it for value to A, who failed and neglected to present it for payment on January 15, 1902, when Doe became 21 years old. A subsequently brought an action thereon and Doe pleaded as a sole defense A's neglect to present the same for payment; its non-protest and failure to give him notice. On the above facts judgment for whom, and why?

15.

15. A made his certain negotiable promissory note in writing, by which he promised to pay to the order of B the sum of \$1,000 three months after date for value received. B, in fraud of A, altered the note and made it read \$2,000, and in that form it came into the hands of C, a holder in due course, not a party to the alteration. The note not having been paid at maturity, C sued A thereon. The above facts appearing on the trial, what should the judgment be and why?

16.

16. B, a married woman, is the owner of certain houses in the city of New York. Her husband came to X, a carpenter,

and stated that his wife wanted some repairs made therein of the value of \$500, which the carpenter made. He presented his bill therefor to the wife who refused to pay, stating that she never authorized her husband to order the same. X consults you and claims that the husband had, by virtue of the marital relation, the right to act for the wife in the transaction, and as her property was increased in value by the repairs, the benefits of which she was reaping, she should certainly pay. What would be your advice?

17.

17. X, a real estate agent, having charge of the renting and repairing of a certain house, the property of A, known as street number 74 First street, New York city, sent the following written order to Y, a carpenter: "Repair premises No. 74 First street, New York city, for which I am the agent in the following manner (stated) not to exceed in cost \$500. "(Signed) X, Agent."

The carpenter did not know who was the owner of the property. He did the work in a proper manner, as requested, and charged it to X, the agent, individually. X refused to pay. The carpenter consults you as to the agent's liability. What would be your advice?

18.

18. A was surety and B principal in a bond, conditioned that C would pay \$5,000 in cash to B on January 1, 1901. On January 1, 1901, C was unable to pay and asked B for three months' additional time. B replied, "All right; take it." At the expiration of the three months C did not pay and B sued A on the bond. A knew nothing concerning the transaction, and now claims that the facts disclosed discharged him from his obligation. What do you say, and for what reason?

19.

19. A entered into a contract in writing with B, whereby A was to receive from B and manufacture into cloth a certain quantity of wool, the cloth to be delivered at B's warehouse

in Boston. The performance of the contract was duly guaranteed by C. Subsequently, after the delivery of the wool by B, but before the cloth was manufactured, B sold the cloth to D, in New York city, subject to delivery by A to D, at D's store in New York. A assented to this arrangement, nothing being said to C about it. A failed to perform his contract to manufacture and deliver the cloth. B sues C on his guaranty. Can B recover? If so, why? If not, why not?

20.

20. A has a judgment against B, which is a lien on a building which is B's only property, and obtains upon the building for his benefit a policy of insurance in X company. The building burns. The insurance company refuses to pay the loss and A brings suit against it. Can he recover? State the principle involved.

21.

21. A was employed by B as a clerk, and being unable to obtain the wages due him he took out an insurance policy upon the life of B for the amount of his claim. He then left B's employ. Ten years thereafter B died, without having made any payment upon the amount due A. The insurance company refused to pay. A brings suit upon the policy. Can he recover? State your reasons.

22.

22. An Art Association obtained the loan of a valuable painting for the purposes of an Art Exhibition, and entered into an agreement in writing with the owner "to return the said work of art to the owner at the end of the Exhibition in as good condition as when loaned." The Association was to pay the owner of the picture nothing for its use. The painting was placed on exhibition with other pictures in a gallery to which the public was admitted upon the payment of an admission fee. A visitor, afterward declared to be insane, struck the painting with a chair, thereby doing it great damage. The injury to the picture did not occur through any fault or negligence of the Art Association. Is the owner

entitled to recover from the Art Association the amount of damage sustained? Give your reasons.

23.

23. A farmer entered into a contract with a miller under which the miller was to grind at his mill a certain quantity of corn and oats, owned by the farmer, mix them in certain proportions and sell the mixture as horse feed. The proceeds of sales were to be divided between the two, ninety per cent. to go to the farmer and ten per cent. to the miller. A creditor of the miller obtains an attachment upon the mill and its contents including the horse feed above mentioned, which had been manufactured but not sold. What are the rights of the respective parties with reference to the feed? State your reasons.

24.

24. A bought goods from B, who warranted the same to be of a certain quality. The price paid was twenty-five per cent. below the real value of such goods corresponding to such warranty. Upon delivery of the goods to A, it was discovered that the goods were inferior in quality. A retained the goods and brought an action against B upon the warranty. Can A maintain his action, and if so, what is the measure of damages?

25.

25. A farmer sold a flock of sheep which he knew to have an infectious disease known as "scab." He represented to the vendee that the sheep were healthy. The vendee believed and relied upon his representations and put the diseased sheep in the same pasture with sheep which he had raised and which were free from disease, with the result that the latter became infected and diseased, and many of both flocks of sheep died. The vendee wishes to bring an action against his vendor. What kind of action would you advise him that he can bring, and what will be the measure of damages, if any?

EXAMINATION PAPER.

No. 1.

AFTERNOON — FOUR HOURS.

26.

1. On the trial of an action to recover damages for an injury claimed to have been caused by reason of the defective condition of a trolley car and its appliances so that the motorman could not readily stop the car and prevent the accident complained of, the plaintiff called X as a witness and offered to prove by him that the motorman told him one hour after the accident that the car and its appliances were in an unsafe condition at the time of the accident, and that he had reported its condition to the defendant on the evening before the accident. The defendant objected to the evidence. How should the Court rule and for what reason?

27.

2. In an action against a warehouseman for loss of goods by negligence, the plaintiff, on the trial, was permitted to give evidence under objection, exception being taken, to show that both before and since the loss of *his* goods, certain goods of other parties had been erroneously delivered from the same warehouse through defendant's negligence. Plaintiff obtained a verdict. Defendant appeals, the foregoing being the only exception in the case. How will the appeal result and why?

28.

3. On the trial a material witness for the plaintiff was asked on his cross-examination by the defense for the purpose of impeachment, if when he left his last employer, he

did not take away some articles which did not belong to him. The witness answered in the negative. Subsequently the defense called the employer, who, under objection, was permitted to give evidence tending to show that the answer of the witness was untrue. Exception was taken. Was it well taken or not? Give your reasons and state the rule.

29.

4. Objections had been duly filed to the probating of the last will and testament of B on the ground that at the time of its execution, B was of unsound mind. A, not an expert, and exceedingly illiterate, but who was a witness to the will, was asked on the trial, whether or not, in his opinion, B was of sound mind when he executed the will. Objection is made that the witness is not an expert or qualified to answer. Should the evidence be received or not? State your reasons.

30.

5. A sued B to recover damages for breach of promise to marry. On the trial the court, under defendant's objection, permitted the plaintiff to prove that the defendant was generally reputed to be a wealthy man. Was the evidence competent or otherwise? On what theory?

31.

6. A with felonious intent to burn the barn of B procured camphene and other combustibles and placed them in his room and then went and solicited C to go and get the articles mentioned and use them in burning the barn of B. C promised but neither did anything to that end or ever intended to. What, if any, crime is A guilty of?

32.

7. A married B, and while she, B, was living and his lawful wife he married C; then B died and afterward he married D and for his last marriage he was indicted for bigamy. Guilty or not guilty. Give your reasons.

33.

8. John Doe was put upon trial on an indictment for assault in the second degree against A. Doe being a witness in his own behalf, on cross-examination was asked if he did not, at a given time and place, before the alleged offense, feloniously break into the house of B, which he denied. The prosecution then called B, who testified, against the objection of Doe, that the latter did commit such burglary. The defendant took an exception to the ruling. Doe was convicted. He appealed. Will the conviction stand? State your reasons.

34.

9. A being the owner of and having in his possession a promissory note made by B for \$5,000 and interest, payable to bearer, sells it to C for value. He did not indorse it, neither did he warrant it nor make any statement or representations in regard thereto. He knew, however, that a bank check of B's had been dishonored the day before for non-payment, and that he had been sued on another debt, but believing that B was nevertheless solvent, he made no mention of the facts. B was not solvent and the note was not paid at maturity. C consults you. Has he a cause of action against A under the circumstances? State fully.

35.

10. A servant sued his master for negligence. On the trial it appeared that the servant was directed to do a particular piece of work that required special knowledge and skill on the part of a co-employee who was detailed to assist him in its performance. The co-employee was drunk at the time the work was done, a fact, however, unknown to the servant, who relying on the competency of the co-employee, undertook to do it properly and was injured because of the then condition of the co-employee. The above facts appearing both sides move for judgment. Judgment for whom, and why?

36.

11. A and B were tenants in common of a farm, of which A was in possession with the acquiescence of B. A sowed the farm to rye, and in due course of husbandry, reaped and stored in his barn 1,000 bushels thereof. B demanded one-half of the rye as his share of the annual product of the farm and being refused took possession of the same, without A's consent. B refused to return the same on demand. What remedy has A under the circumstances?

37.

12. A drew his own will and signed it. A few days later B came to his house on a visit and A exhibited the will and his signature to him, and said, "B, that is my will and I want you to sign it as a witness," and B did so, then and there in A's presence. A laid the will aside and forgot about it for upwards of six months, when he took it to a neighbor, some distance away, B not being present, and repeated his statement, as above, and the neighbor signed his name as a witness also, under B's signature. The will had no attestation clause, nor did the witnesses give their respective places of residence. Question arises as to the sufficiency of the execution of the will. What do you say? Give your reasons.

38.

13. A married woman died intestate leaving a husband, two sisters and a mother, but no descendants her surviving. Her estate consisted of \$100,000 in government bonds. How shall it be distributed?

39.

14. The will of A gave the sum of \$100,000 in four per cent. government bonds to B in trust to collect the income thereof and to apply \$2,000 of the same annually to the support, education and maintenance of his infant son John; the surplus income to be added to the principal until John became of age. After that period, John was to have the in-

come of the whole fund until he was thirty years of age, at which time the trust was to cease and the entire fund paid over to him. John was sixteen years old when his father died. John arrives at the age of twenty-one years and asks your opinion as to the validity of the trust. What would be your advice?

40.

15. A, while in peaceful possession of a certain lot of ground under claim of lawful title, in good faith, made permanent improvements thereon of the reasonable worth and value of \$10,000. The true owner now seeks the aid of equity to establish his title. What should the court decree as a condition of granting relief, and for what reason?

41.

16. Your client placed in the hands of his agent \$5,000 to be invested by the latter in bonds and mortgages. Instead of doing so, the agent used one-half of the fund in the purchase of a paid-up policy of insurance on his life in the sum of \$5,000, which he made payable to his wife. The wife was ignorant of her husband's fraud, and in entire good faith, demands the amount of the policy after the agent's death. Has your client any rights under the circumstances? If so, what are they and how would you enforce them?

42.

17. A stood by and allowed B to sell and deliver, as his own, A's horse to C for \$500 in cash. A said nothing at the time for the reason that he was not requested to speak. A now seeks to recover his horse from C, and consults you as to his position. What would be your advice?

43.

18. A State banking corporation subscribed for the stock of a railroad company having no authority under its charter or under the statutes so to do. This it does in the name of one A, on condition that the bank and A shall share the profits. After the stock is allotted by the railroad company to

A, he refuses to deliver to the bank its share of the stock or profits. The bank has done nothing in performance of the contract. It sues A. What should be the result and why?

44.

19. Three railroad companies of the State of New York, X, Y, and Z, are consolidated and merged into one corporation. All three companies owed at the time of the consolidation floating debts of equal amount. X Railroad Company was solvent and its creditors had ample equitable liens upon its property. The other constituent companies were insolvent and there was nothing out of which their unsecured creditors could be paid. After the consolidation a conflict arose among the creditors of the respective constituent companies, relative to the priority of their claims. What are the rights of each group of creditors with reference to equitable liens upon the property?

45.

20. A corporation sold and conveyed its real estate to A, who purchased in good faith and for full value. The proceeds of this sale were lost in a bad investment. The remainder of the corporate assets consisted of personal property which the stockholders divided among themselves in the proportions of their holdings in the stock of the company. The creditors of the company were not paid and ask you whether they are entitled to recover the amount of their claims out of the real estate sold to A, and the value of the personal property divided among the stockholders. What do you advise? State your reasons.

46.

21. A is a resident of a country town; his family consists of a wife, a minor son, his wife's minor daughter by a former marriage, his wife's mother and his paternal and maternal grandparents. He refuses to support his family, although he is financially able to do so, and no member of the family has any other means of support. What members of the family

can he be compelled by law to support, and how can the law be enforced?

47.

22. A was married to B, and thereafter absented himself for five successive years without being known to B to be living during that time. Immediately after the period of five years had passed B married C, both acting in good faith. A child was born of the second marriage. After the birth of the child A returns, and A, B and C, ask your advice as to the character of the second marriage, whether the child is *legitimate*, and what course should be taken to protect the rights of all without giving offense to law or morality. What do you advise?

48.

23. Certain buildings belonging to a ward were burned and A, the general guardian, collected the insurance money and without obtaining an order of the court, erected other buildings on his ward's land at a cost of \$2,000 in excess of the amount of insurance money. The said sum of \$2,000 was advanced by him personally, from his private funds, without first obtaining an order of the court authorizing him to do so. On coming of age the ward sold the entire property, but refused to reimburse A for the \$2,000 advanced by him. A brings a suit for his reimbursement. Can he succeed? State your reasons.

49.

24. A leased to B for a term of twenty years, his farm of 100 acres of land upon the following terms. For ten years the land was to be used by B solely for farming purposes, and A was to receive an annual rental of \$500. It was provided in the lease that at the end of the tenth year for a period of ten years thereafter, in addition to the first period of ten years, B was not to work the land as a farm but was "to search for, explore, excavate, dig and carry away iron ore on and from said lands" with the "right to erect thereon all constructions and appliances necessary for mining, washing, loading and moving iron ore." A was to receive from B a royalty on all ore mined and shipped of twenty-five cents

per ton. A dies, and his heirs claim that the lease is invalid under the Constitution of the State of New York. Your advice is asked. What do you advise?

50.

25. Your advice is asked upon the constitutionality of a bill proposed to be introduced in the Legislature entitled as follows:

“An Act discontinuing the highway passing across the lands of John Doe in the town of Macedon, in the county of Wayne to the Erie canal, and for the allowance of the claim of John Doe against the State of New York for the maintenance of said highway.” What do you advise? State your reasons.

EXAMINATION PAPER.

No. 2.

FORENOON—FOUR HOURS.

51.

1. Draw a complaint in an action in the Supreme Court in favor of the payee and against the maker of a promissory note. Omit verification.

52.

2. State what must be shown in order to obtain a writ of replevin at the time an action to recover a chattel is commenced in the Supreme Court.

53.

3. On the trial of an action for breach of a contract in which the defendant did not plead as a defense the statute of frauds, the testimony established, without objection, that the contract was void under the statute. At the close of the testimony the defendant moved for judgment on the ground that the contract was void. What should the ruling of the court be, and why?

54.

4. How would you compel a person to produce upon a trial or hearing a book of account?

55.

5. In an action for goods sold and delivered the defendant's answer pleaded payment as a sole defense. On the trial both sides demanded the right to open the case to the jury and to adduce his evidence first. The court decided in favor of the plaintiff. The defendant excepted and appealed from

a judgment in favor of the plaintiff and urged the above exception as the sole reason why it should be reversed. What should the ruling of the Appellate Tribunal be, and why?

56.

6. On June 2, 1895, A duly docketed a judgment in the Erie county clerk's office against B for \$5,000 damages and costs. State under what circumstances you can issue an execution on the judgment in 1903, B still residing in Erie county.

57.

7. A executed and delivered to B a mortgage, dated June 1, 1900, on his real property for \$2,000 in cash loaned to him at the time. B never recorded the mortgage. At that time A was justly indebted to X in the sum of \$4,000, which he could not otherwise pay, except by deeding to him the land in question. X searched the records and finding the premises free and clear of all incumbrances and acting in entire good faith and without knowledge of B's mortgage, took a deed dated August 1, 1900, of the same from A in full payment and satisfaction of his debt, which deed he put on record at once. B then learned of X's deed, and that it was recorded, and thereupon consults you as to his rights in the premises. The fair market value of the property is \$4,000. What would be your advice, and why?

58.

8. A tenant in possession of a factory under a lease took out an engine, the property of the landlord, which was on the premises when hired and included in the lease, and erected on the foundation from which he took the old, a new engine for the purpose of carrying on his legitimate business upon the demised premises. The tenant's term is about to expire and he wishes to remove from the premises the new engine and to replace the old one where he found it which he can do without injury to the premises. The landlord claims title to the new engine, and forbids its being taken away. The tenant consults you. What do you say?

59.

9. A died intestate leaving real property. His only heirs-at-law him surviving are a grandchild, who is a son of a deceased son, and three grandchildren, daughters of a deceased daughter. How will A's real estate descend?

60.

10. A and B were members of the same social club. During A's absence in Europe, B learned that A was "posted" at the club for non-payment of dues and B paid the amount in full, without any request by A to do so. Upon A's return B informed him of the payment made for his account and A promised B to reimburse him therefor, but neglected to do so. B brings an action against A to recover the amount. A defends. Who wins and why? State fully with your reasons.

61.

11. Two members of the New York Produce Exchange, X and Y, entered into a contract in writing, July 1, 1902, whereby X purchased of Y 10,000 bushels of wheat, at the then market price for delivery January 1, 1903, but the contract provided that both parties waived the actual delivery of the wheat, and that on January 1, 1903, settlement should be made by the payment by X to Y of the amount of any decrease in the market price of the wheat, and Y should pay to X, the amount of any increase thereof. January 1, 1903, the price of wheat in the market was ten cents per bushel higher than it was July 1, 1902. X demands from Y the payment to him of \$1,000. Y consults you as to his liability. What is your advice to him. State fully with your reasons.

62.

12. X and Y, under an agreement in writing, entered into a copartnership as millers, under the firm name of X & Y. X, without the knowledge of Y, purchased of A a quantity of lumber for which he gave his individual note payable to the firm and indorsed by him in the name of the firm. The lumber was shipped to X individually in accordance with his order. When A sold the lumber to X and took the partner-

ship security, he did not know of the limitation of the partnership business to milling. The note was not paid at maturity and A brings an action against the firm of X & Y upon the firm indorsement. Can he recover? If so, why? If not, why not?

63.

13. A and B were copartners and duly dissolved their copartnership. Thereafter D, who held a claim against the firm which was barred by the statute of limitations, obtained from A, in the name of the firm, a written acknowledgment of and promise to pay the debt. D brings an action against A and B for the amount of the claim and B defends. Who wins and why? State fully.

64.

14. A made his promissory note to B, who indorsed the same to D for value, after forging thereon the indorsement of C. D indorsed the note to E for value, before maturity, but "without recourse." Upon the maturity and non-payment of the note, E gave due notice to all whose names appeared as indorsers, but learning that A and B are insolvent, and that C's indorsement was forged, asks you whether he has a cause of action against D. What do you advise him and why? State fully.

65.

15. A promissory note was executed by A to B for an illegal consideration. B indorsed the note to C, who had notice of the illegality but did not participate in it; C then indorsed it to D, a *bona fide* holder for value. Upon the maturity of the note C paid the amount thereof to D and took up the note, and asks you whether he can recover thereon against A, the maker of the note. What do you advise him, and why?

66.

16. A, the owner of a restaurant, employed B to manage the same, but strictly forbade him to buy supplies on credit. C sold B supplies on time, not knowing of A's connection with the business, relying solely upon B for payment. B did not pay C the amount due him, and upon learning of A's

ownership of the restaurant brings an action against A to recover the amount of indebtedness incurred by B. Can he recover? Give your reasons.

67.

17. The X Co., a mercantile agency, entered into an agreement with A to furnish him, through B, its agent, information concerning the financial standing of C, a merchant. B, without the knowledge of the X Co., knowingly gave to A false information concerning C's financial condition, with intent to deceive A and benefit C. A relied upon the information and gave C credit, thereby sustaining loss. A brings an action against the X Co. to recover the damages sustained by him. Can he recover? If so, why? If not, why not?

68.

18. A believing B to be of age, became his surety to C for the payment by B of the purchase price of a valuable horse, sold and delivered to him by C. B refused to pay. In an action brought by C against B, the latter successfully defended on the ground of infancy. C then sued A, the surety, on his undertaking, to collect such purchase price. A defends on the ground of B's contract being void by reason of his infancy. Judgment for whom, and why?

69.

19. A and B made their joint promissory note for \$5,000 to C, with D as surety. Upon the maturity of the note A offered C \$100, if he would release him and look to B and D, who were solvent, for payment of the note. C accepted the offer and executed to A a release in writing. The note was not paid and C brought suit upon it against B and D who ask your advice. Have they or either of them a good defense? State fully, with your reasons.

70.

20. A policy was issued on the life of A, payable upon his death "to his wife." Subsequent to the issuing of the policy, A divorced his then wife for adultery. A subsequently mar-

ried C, who was his wife at the time of his death. The first wife is also alive and claims the proceeds of the policy. The question arises to whom should the policy be paid? Give your reasons for your answer. □

71.

21. The X Insurance Company, by its agent, issued a policy of \$10,000 against loss by fire, upon B's automobile factory. The policy provided that "if a building is insured that is on leased land, the same must be specifically represented to the company, and expressed in this policy in writing; otherwise the insurance shall be void." B's factory was on leased lands, and that fact was not expressed in the policy, no reference being made thereto, but the company's agent knew of the fact when he issued the policy. A loss from fire occurred during the life of the policy, and the company disputes its liability, claiming that the policy was void on the grounds stated. B sues, and the company defends. Judgment for whom, and why?

72.

22. A allowed B the use of his valuable family horse for the day without pay. B drove to a neighboring village, and stopping at the hotel for dinner, intrusted the care of the horse to a hostler, through whose negligence the horse was so badly injured as to be worthless. The hostler and his landlord are both irresponsible. Who must stand the damage? Give your reasons.

73.

23. A made a contract with B, a boarding-stable keeper, to take, feed and care for his two horses for four months for compensation. During the time B hitched one of the horses to drive on his own business, without A's knowledge or consent, and while so driving, with no fault on his part, he was collided with by a runaway horse, in which collision, he, B, was badly injured, and the horse he was driving was killed. During his absence his stable took fire and burned, killing the other of A's horses, as well as several of B's, and destroying all of his other property therein, without B's fault or

negligence. What, if any, is B's liability to A? State your reasons, and the relations sustained between A and B.

74.

24. A, knowing that he was insolvent, fraudulently purchased of, and received from B, 100 dozen of knit goods on a credit of three months. A was *bona fide* indebted to C at the time, who was also engaged in the knit-goods business. C purchased of A the goods in question at a fair value to replenish his stock, the purchase price to be applied on his antecedent debt. At the time C purchased and received the goods, he had no knowledge of A's insolvency, but believed him to be otherwise, and acted in good faith. The next day A was closed upon executions. B, who has not received pay for his goods, consults you. What do you advise him, and for what reasons?

75.

25. An agent with express authority to sell goods, not to be manufactured, warrants them to be equal to a sample exhibited. Relying on the warranty, A purchases. The goods were not equal to the sample, and there was a breach of the warranty to A's damage in the sum of \$5,000, to recover which he brings action. On the trial it was proven that the agent had no express authority to make the warranty, which fact, however, was unknown to A. On the above facts both sides rested, and moved for judgment. Judgment for whom, and why?

EXAMINATION PAPER.**No. 2.****AFTERNOON — FOUR HOURS.**

76.

1. In an action brought to recover the value of certain stone used in the construction of a bridge on defendant's road, the defense was that the stone was sold and delivered to X, who had the contract to build the bridge and to furnish the materials. Plaintiff offered to prove that the stone in question was drawn and delivered under the direction of A, defendant's chief engineer, and his promise to pay on behalf of the defendant. Objection was made to the testimony because of want of proof of the engineer's authority. Plaintiff then offered testimony to prove a previous similar purchase of cement used in the construction of the bridge, which was paid for by the defendant. Objection is made to this testimony. What should the ruling of the Court be, and why?

77.

2. At the time of the execution of a lease in writing, under seal, wherein the landlord let and rented certain premises to B for a term of five years, the landlord orally agreed that if the premises next adjoining the leased property should be destroyed, at any time during the term, that the tenant was authorized to terminate the lease, but no such clause was inserted therein. The premises next adjoining was destroyed during the term and the tenant elected to end the lease and moved out, after notifying the landlord and paying his rent up to the time he quit. The landlord thereupon sued the tenant for the balance of the rent re-

served by the lease. On the trial of the action the tenant offered to prove the landlord's oral agreement made at the time the lease was executed. Objection was made. What should the ruling of the Court be, and why?

78.

3. On the trial of an action, involving questions of pedigree, the plaintiff offered to prove by A, that he heard the father of B, the defendant, who is at the time of the trial residing in Europe, state, under circumstances as to preclude any presumption of interest or bias, that B, his son, was born in New York city on March 10, 1876. The question as to the date of B's birth being material to the issue, should the Court admit or exclude the testimony on the state of facts above presented, objection having been made thereto. State your reasons.

79.

4. On the trial of an action for divorce, founded upon an allegation of adultery, the husband, who was the plaintiff, called his wife, who was the defendant, as a witness in his behalf. The corespondent, who was a party to the action, objected to her being sworn as a witness on the ground that she was not competent to testify. State the rule governing the competency of the wife under the circumstances.

80.

5. On the trial of an action for damages for causing the death of plaintiff's intestate by the collapse of a bridge after much testimony had been given describing the bridge and its condition, a competent engineer was called as a witness by the plaintiff, and he was asked, after stating that he had inspected the bridge immediately after the accident, "What, in your opinion, caused the bridge to collapse?" Objection is made to the question. What do you say? Give your reasons.

81.

6. A burglar, while engaged in burglarizing B's house, without a design to effect death, but solely in aid of his es-

cape, shot at B and killed C, a bystander. Of what crime is the burglar guilty? State your reasons.

82.

7. A, B and C were jointly indicted for a misdemeanor. You appear for A, and on the trial demand that he be tried separately. The district attorney objects and the Court decides against you. The three are tried together and all found guilty. Error is predicated on the decision of the trial court. Should the conviction stand? If so, why so, if not, why not?

83.

8. A, in the daytime, feloniously took from in front of B's store, where the same was displayed, an overcoat of the value of \$10, B's property, and, on being pursued by officers of the law, was aided to escape from arrest by C, who knew that A had stolen the coat. Of what crime is C guilty of, if any? If not any, why not?

84.

9. Doe and Roe, meeting on a highway, had a dispute. Doe, while standing within striking distance of Roe, lifted an axe which he was carrying, as if he was about to strike Roe with it, at the same time saying to Roe: "I will brain you with this axe," but desisted and did not strike. Roe consults you as to whether under the circumstances he has a cause of action against Doe. What do you advise? Give your reasons.

85.

10. A and B were the owners of adjoining farms. A's ox gored B's ox through the fence which separated the two farms, causing the death of B's ox. A's ox was not known to be vicious and there was no negligence on the part of either A or B in properly maintaining the division fence. A and B both consult you and ask upon which of them the loss of the ox must fall. What do you advise them, and why? State fully.

86.

11. A farmer owned a farm which was crossed by a railroad track over which was the usual farm crossing, with a

gate in the fence on either side. While attempting to drive a flock of sheep across the railroad track upon the farm crossing, the sheep bolted and ran along the railroad track. A train approached, seeing which the farmer went upon the track to rescue his sheep from destruction and was himself struck by the train and killed. Upon the trial of an action against the railroad company, brought by the wife of the farmer as administratrix, to recover damages sustained by his death, the only question at issue was the alleged contributory negligence of the farmer. Was the plaintiff entitled to recover? State fully, with your reasons.

87.

12. A, a minor, having a natural father and mother, B and C, was duly adopted by D. A's natural father, B, died intestate, leaving an estate of \$12,000 in cash. He was survived by A and E, a daughter, and by C, his widow, natural mother of A and E. Immediately after the death of B and before his estate was administered A died intestate. Who are entitled to share in B's estate, and what is the amount to which each is entitled?

88.

13. Two farmers, A and B, each owning 100 acres of land, exchange their estates by mutual conveyances in which their wives do not join. A dies intestate. His widow claims dower in both estates. What are her rights? State fully, with your reasons.

89.

14. A citizen of New York, who was a soldier in the United States army, was fatally shot in a battle with Indians. Immediately thereafter and before his death on the field of battle, realizing that he must die, and having no facilities for writing a will, he stated to three comrades that it was his will that all his property should go to his sister, Mary, and requested them to put it in writing and witness the same at the first opportunity, with which request they complied. A contest has arisen between Mary, the sister, and John, the brother, of the deceased, Mary claiming to

take all the property of the deceased brother, and John claiming half of the property under the statute of distribution. Who wins and why? State fully.

90.

15. A was the owner of a fine farm of 100 acres of land, with good buildings, capable, under proper management, of paying the interest on a valuation of \$10,000, which sum the farm was reasonably worth. A was induced by B to sell him the farm for \$1,000, which sum B paid to A in cash and took possession. A, moved by the injustice of his act to his family, tendered to B the \$1,000 paid by him and demanded the reconveyance of the farm to him and brings a suit to set aside the sale on the ground of inadequacy of consideration. In whose favor will judgment be granted? Give your reasons.

91.

16. A widow had four children, all of whom, except a son, A, were minors. Her real estate was encumbered by a mortgage, and, being unable to pay the interest, she conveyed the same to A without consideration in pursuance of a parol agreement by A to hold the same for the benefit of the children, including himself. A was to have the accruing rents and his board in the family, and was to pay the interest on the mortgage and the taxes on the property. The widow died. A continued to perform his agreement for some time thereafter. He finally sold the premises and with the proceeds of the sale purchased other real estate and took title in his own name. He thereupon repudiated his parol agreement and claimed to be the sole owner of the property. Have A's brothers and sisters any remedy against him? If so, what? Answer fully, stating your reasons.

92.

17. A executed a mortgage to B for \$5,000, which was usurious, in that A received from B but \$4,000. After paying the interest on the mortgage for some years A died, leaving a will whereby he devised the mortgaged lands to

C. C asks you how he can rid his land of the mortgage without paying it off. What is your advice to him? Give your reasons.

93.

18. The X corporation, being insolvent, B, its president, well knowing its insolvency, procured A, his wife, to institute suit to recover judgment on a past-due promissory note of \$5,000, given by the corporation to her, for value, which she did, and recovered judgment by default. You are consulted as to the validity of the judgment. What do you advise, and why?

94.

19. X was a corporation organized for the purpose of the manufacture and sale of beer and malt. Y, one of its directors, was required to furnish a surety for the payment of the rent of the house which he rented of A. In pursuance of instructions by resolution of the board of directors, unanimously passed, the X corporation, by its authorized officers, became such accommodation surety for Y, who failed to pay the rent when due, whereupon A sued the X corporation as surety to recover such rent. If you were consulted, what would you advise as to X corporation's liability; and, if you defended, upon what ground would you base your defense?

95.

20. The board of directors of a domestic corporation, which had no surplus profits coming from its business, borrowed on the notes of the corporation \$50,000, which was used in making dividends on its capital stock, pursuant to a resolution of the board, two of its seven directors duly dissenting. Certain creditors of the corporation consult you as to the legality of the transaction, and what and against whom, if any, liability exists therefor? What do you advise?

96.

21. A wife procured an insurance on the life of her husband for \$7,500, payable to her upon his death. The annual premium therefor was \$750, which was paid by the husband out of his own property. The husband died leav-

ing no property, but debts to the amount of \$5,000. There are \$7,500 due from the insurance company upon the policy aforesaid. To whom will it go?

97.

22. A was the illegitimate child of B and C. After its birth B and C intermarried, and thereafter B, the father, died intestate, leaving C, his widow, and A, the child, and X, his father, him surviving. He died leaving both real and personal property. To whom and in what proportions will the property descend and be distributed? Answer specifically.

98.

23. A husband acquired \$10,000 in property from his wife by antenuptial contract. After the marriage the wife became indebted to X in the sum of \$5,000. She is insolvent, and her husband refuses to pay the debts. What are the husband's duties and responsibilities in the premises?

99.

24. The Legislature of the State of New York passed an act prohibiting and subjecting to punishment as a crime the selling of tickets for passage on vessels or railroad trains, by any person except common carriers and their specially authorized agents. Is the act constitutional or unconstitutional? State fully your reasons.

100.

25. The Legislature passed an act authorizing the X Street Railway Company to construct and operate its road along and through a public highway, to the center line of which the abutting owners had title, provided only that the consent of the commissioner of highways in that district be obtained by the company, which was done. In pursuance of the act the railway company has begun the construction of its road. The abutting owners desire, if possible, to prevent such construction and consult you. Is there any relief? What advice would you give them? What constitutional provision is involved?

EXAMINATION PAPER.

No. 3.

FORENOON—FOUR HOURS.

101.

1. Your client hands you a promissory note for suit. Draw a verification to a complaint thereon to be made by yourself as plaintiff's attorney.

102.

2. A has a cause of action against B which will outlaw in a day. He desires you to sue thereon at once. Upon inquiry made at B's place of residence you are informed that he is absent from home and will not return for thirty days. You cannot learn his present whereabouts. What could you do under the circumstances?

103.

3. What is an injunction order, and in what cases may it be granted in an action?

104.

4. You serve a verified complaint in an action on a promissory note made by the defendant. He answers by a verified general denial. It is certain to a demonstration that his answer is false, and you can procure and serve many affidavits to establish that fact. Can you have his answer or defense stricken out on motion? Give your reasons.

105.

5. How and when must a subpoena *duces tecum* be served to compel a person who lives fifty miles from the court-house to produce upon a trial a book of account?

106.

6. On the trial of a civil action in a court of record, how many jurors may each party challenge peremptorily?

107.

7. The lease of a store provided that the landlord would make all necessary repairs. A skylight became out of repair during the term and for a number of days because of it, rain leaked through on the tenant's stock of silk directly under the same. He notified the landlord, who promised to make the repairs, but did not. The landlord subsequently sued for rent and the tenant set up as a counterclaim thereto the loss and damages sustained by reason of the injury to his property. What is your opinion as to the rights and remedies of the parties to the action? State them.

108.

8. A devises a piece of real property to his son B for life, with remainder over to C on B's death, with power to B, during his life, to sell the same and devote the proceeds to his own use. A creditor has obtained a judgment against B and is about to sell the property under an execution. C consults you. What are his rights and remedies, if any?

109.

9. A testator devised to his executors in trust, his certain farm, with directions to collect and pay over the net income thereof to his five children during their joint lives and on the death of the survivor to sell the same and to distribute the proceeds as designated, giving and granting to his said executors power at any time in their discretion during the continuation of said trust, to sell the farm and make an immediate distribution as therein provided for. Question arises as to the validity of the trust. What do you say? Give your reasons.

110.

10. A, a man thirty years of age, who had ceased to be a member of the family of B, his father, a wealthy man, while

traveling, became sick, and being without funds and in great distress, was properly cared for at the expense of C, a citizen of the place where he then was. After A recovered and all of his expenses had been paid by C, B wrote a letter to C, promising to pay such expenses. B did not pay the expenses and C sues him for the amount thereof. Judgment for whom and why? State your reasons.

111.

11. A farmer, A, was indebted to B, in the sum of \$100. He sold to C 200 bushels of oats at 50 cents per bushel. C paid A no money for the oats, but promised to pay B the \$100 which A owed him therefor. This was satisfactory to B. C did not pay B and B sues C, who defends on the ground that he has never had any dealings with B and owes him nothing. Who wins, and why?

112.

12. A and B were co-partners doing business under the firm name of A, B & Co. A was indebted to C upon a personal matter not connected with the business of the firm, and when C pressed A for payment, he gave to C for the amount of his debt his promissory note, payable to the order of himself, which, without consulting B, he also indorsed in the partnership name. The note was not paid at maturity and the firm received notice of presentment and non-payment. An action is brought against A, B & Co., as indorsers, and B consults you. What do you advise him? State fully.

113.

13. A and B are co-partners. A is satisfied that he is entitled to receive from the profits of the firm a large amount of money which is in B's hands, and which he desires to obtain as soon as possible. He has demanded the money from B, who refuses to pay it over. He desires you to bring an action against B to recover the amount. What do you advise A? State fully.

114.

14. A was the holder of a promissory note, of which B was the maker and C was the indorser. Before the maturity of the note, C asked A to let the note run another year, to which A replied that he would do so if C would "let his name be on it, and let it be as it was." To this C assented. At the maturity of the note, A did not present the note for payment nor give notice to C of non-payment. At the end of the year the note was not paid and A brings suit against C as indorser. C defends upon the ground that he was discharged as indorser by failure of presentment and notice and that his assent to the extension of time was without consideration. Who wins? Why?

115.

15. On the 1st day of February, 1896, A made his promissory note for \$1,000, with interest, payable to the order of B, on demand. B demanded payment February 15, 1902, and payment being refused, he brings suit against A. A defends, setting up the statute of limitations. B insists that he had a reasonable time within which to demand payment of the note before the statute of limitations began to run. Judgment for whom? State your reasons.

116.

16. A applied to B for a loan upon bond and mortgage. B referred the matter to his agent, C, with instructions to examine the title to the real estate and approve or disapprove the loan. C found the record title to be in A, and clear from incumbrances, but was informed by A that he had theretofore executed a deed of the real estate to D as security for a loan, but that D had withheld the deed from record and had permitted A to remain in possession of the premises. C colluded with A to keep the knowledge of the prior unrecorded deed to D from B, and made a report to B, approving the loan. B made the loan and recorded his mortgage. Subsequently, D put his deed on record. B begins a foreclosure of his mortgage. D defends, alleging that the notice of his deed given to B's agent, C, was notice to B. Judgment for whom, and why?

117.

17. A passenger on a railroad train angered the conductor of the train by a caustic criticism of the conductor, who thereupon assaulted the passenger, wilfully and wantonly, and inflicted a malicious injury upon him. The act of the conductor was in violation of the rules of the railroad company, of which he had due notice. The passenger sues the railroad company for damages. The railroad company defends upon the ground that the conductor in doing the acts complained of was not acting within the scope of his employment. Judgment for whom, and why?

118.

18. A and B, co-partners, dissolved. B took the partnership property and agreed with A to pay the partnership debts. Thereafter a firm creditor, with knowledge of the facts, and of B's agreement, took B's negotiable promissory note, payable in three months, in settlement of his firm debt. B was then solvent. The note was not paid at maturity, and B having in the meantime become insolvent, the creditor returned it to B and then sued A and B, as co-partners, on the original debt. A consults you. What are his rights and liabilities under the circumstances?

119.

19. A, while in B's employ as a clerk, stole from B \$500, for which B discharged him. A was penitent and wanted B to take him back into his service. B agreed on condition that A give his bond, with a surety, for the honest performance of his duties, etc. Thereupon A furnished such bond, with C as surety, and again entered B's employ. C was ignorant of A's former offense. Soon A stole \$300 of B and decamped. B demands of C to make good the amount. Has C a defense or not? If so, what? If not, why not?

120.

20. In 1896 a husband insured his life in the sum of \$10,000 for the benefit of his wife. He paid the premiums thereon for five years, and then surrendered the policy to

the company in consideration of \$500, paid therefor, which canceled the same. The husband died soon thereafter. The wife knew nothing of the policy until after the husband's death. She now consults you. What do you advise as to her rights, if any, under the circumstances?

121.

21. A fire insurance policy was issued to A, insuring his stock of boots and shoes in his retail store for one year from May 1, 1901. He sold his entire stock in due course of trade during the months of May, June and July, 1901, and closed his store for a two months' vacation. In October, 1901, he bought a new stock of goods and resumed business at the old stand. A fire accidentally occurred in December, 1901, causing a large loss which the company refused to pay, claiming that the company had not insured the boots and shoes in question. What, if any, are the rights of A, and the obligation of the insurance company? State your reason?

122.

22. A hired of B his horse, to work with his own, for the month of August, 1900, for a given price, which was to be returned to B at the expiration of the month. A, not having quite finished his contemplated work, thought to keep the horse a little while longer, which, without the consent of B, he did. On the night of the third of the following month, the stable wherein A kept B's horse, without any fault or negligence on the part of A, accidentally took fire, and B's horse, as well as A's, together with a large amount of other property belonging to A, were consumed by fire. B sued A for the value of his horse. A answered, setting up the facts, and that the destruction of plaintiff's horse was not caused by any fault or negligence on his part. B demurs to the answer. Judgment for whom, and why?

123.

23. In an action against a warehouseman, the plaintiff proved the delivery of his carriage to the defendant for stor-

age during the winter for hire, a demand for the return of the same, a refusal to deliver, and its value. He then rested. The defendant thereupon proved that on a certain night the warehouse, wherein the plaintiff's carriage was stored, was destroyed by fire, and its contents, including plaintiff's carriage, were totally consumed, and then rested. Both sides moved for judgment. Judgment for whom, and why?

124.

24. A sold and delivered to B on a credit of sixty days, his coach team for \$600. The contract of sale, which was verbal, provided that title should remain in A until B paid for the horses. At the time of the purchase B was indebted to C in the sum of \$700. Within ten days after the horses had been delivered to B, C purchased the horses of B, in extinguishment and satisfaction of his debt against B aforesaid, C having no knowledge of the nature of the contract between A and B. B gave to C a bill of sale of the horses, warranting that he, B, was the absolute owner and could convey good title thereto. The sixty days having expired and B not having paid A, what, if any, remedy has A?

125.

25. A sold and delivered to B a horse for the agreed price of \$500, and took from him in payment and discharge of his debt, the note of C, which B indorsed "without recourse." Both A and B honestly supposed at the time of the transaction that C was abundantly responsible, but it turned out that he was then insolvent, and the note worthless. A proffers back the note and sues B for \$500, the purchase price of the horse. B answers, pleading payment and sets up the facts aforesaid. A demurs to the answer and asks for judgment. Judgment for whom? On what theory?

EXAMINATION PAPER.**No. 3.****AFTERNOON — FOUR HOURS.**

126.

1. On the trial of an action, a question of fact was presented. The plaintiff was sworn as a witness on his own behalf. He testified to the fact, and was neither impeached nor contradicted. He was the only witness sworn. When the plaintiff rested his case, the defendant stated that he had no witnesses, and asked to go to the jury. The plaintiff moved for judgment. What should the ruling of the Court be, and why?

127.

2. An attorney rendered to his client a bill for services in the sum of \$500. His client neither made nor tendered payment and the attorney thereafter sued him in *quantum meruit* for \$1,000. On the trial, defendant objected to the attorney's showing that his services were worth in excess of the \$500 for which he had rendered his account. What should the ruling of the Court be, and why?

128.

3. Before a written contract for the purchase by A of B's store and good will was executed, B agreed that he would not open a store of the same kind in the village, where the store was situated, for a period of five years. That agreement was not inserted in the contract because B said it was unnecessary. The sale was consummated and immediately thereafter B opened a similar store in the village and is now actually engaged therein, in the same line of business,

in competition with A. A consults you. What would be your advice, and why?

129.

4. On the trial of an action, an opposing witness swears to a fact material to the issue. You have a witness in Court who will swear, that in a conversation with him, the opposing witness stated the fact to be diametrically opposite to the evidence he has given. What should you do, if anything, to enable you to give the evidence of your witness?

130.

5. On the trial of an action, B, a competent expert witness, was called by plaintiff and after testifying that he was present in Court and had heard and remembered all that A had testified to concerning the facts and circumstances of B's death, was asked this question: "Based on what you heard A testify to, what, in your opinion, was the cause of C's death?" Objection was made. What would be the correct ruling on the question? Give your reason.

131.

6. On the trial of an indictment for grand larceny, the jury having agreed, came into Court and rendered their verdict of guilty. It was received and recorded, and then the prisoner, who was in the jail during all this time, was sent for, and having in open Court waived the appointment of a time for pronouncing judgment, was sentenced to State's prison. What is your opinion as to the validity of his sentence? Why?

132.

7. The prisoner was indicted for perjury. On his trial it appeared as part of the prosecution's case that the facts that the prisoner swore to and for which he was indicted were material to the issue involved and might have affected the result, but that the defendant did not know the materiality of the false statement made by him and that the same did not in fact affect the trial. At the close of the People's case, the prisoner's counsel moved for his discharge on the

above grounds. What should the ruling of the Court be, and why?

133.

8. A was indicted for robbery. On his trial it appeared that he feloniously took B's watch from the latter's person at midnight on a public highway. The watch, which was worth \$30, was gone before B was aware of the transaction, but he discovered his loss almost simultaneously and started in pursuit of A, who, being at the time armed with a loaded pistol, pointed the same at B. B, under the influence of the force and fear of the loaded pistol, allowed A to escape. He was subsequently arrested and indicted as hereinbefore set forth. Was A guilty of the crime of robbery under the circumstances? If so, in what degree? If guilty of any other crime, what, and why?

134.

9. A had upon his land a large spring of excellent water, whose flow was sufficient for use in the farm house and barns. It was the only water upon the farm. B, the owner of the adjoining farm, without intending to injure his neighbor's spring, sunk a well near the boundary line between the two farms, which had the effect of ruining the spring on A's land by drawing off the water therefrom, leaving the spring dry. There was nothing upon the surface to indicate, and no one had knowledge of, the existence of a subterraneous stream between the spring and the well. A sues B for the damages sustained by him from the loss of his spring and B consults you. Do you advise him to settle or to defend, and why?

135.

10. A child of two years of age was permitted by its parents to play unattended in a country road which was a public highway. A traveler, who was driving a spirited team along the highway, did not see the child, his attention being directed to an animal in an adjoining field and the child was run over by the wagon and sustained serious injuries. The driver is sued for damages resulting from the

injury to the child and consults you. Do you advise him that he has or has not a good defense? State fully your reasons.

136.

11. A entertained a dislike for B, a merchant, and C, his coachman, and, prompted by malice, A said of B and C, speaking to a number of people, "Although B rides in his carriage and C is but a coachman, they are both alike, because both are bankrupts." B and C sue A for slander without averring special damage. Are they or either of them entitled to recover? State fully your reasons.

137.

12. A brother and his sister each made a will devising his and her property to John Doe, a friend. Each thereafter married and died without issue. John Doe claims both estates under the wills. The heirs at law of both brother and sister consult you as to their rights. What would you advise? State your reasons.

138.

13. A man died intestate, leaving him surviving a widow, a brother and sister, but neither children nor parents. The estate consisted entirely of personal property and after payment of debts amounted to \$4,000. What are the respective shares of the widow, the brother and the sister in the estate? State your reasons.

139.

14. A man had two sons and two daughters. He duly made his will providing for several specific legacies, but the greater portion of his estate was disposed of by the following residuary clause: "All the rest, residue, and remainder of my estate, I give, devise, and bequeath unto my two sons, share and share alike." Later he became angry at his two sons, because of their undutiful conduct toward him, and determined to change his will so that his two daughters should take the residuum of his estate instead of his two sons. He, therefore, obliterated the word "sons" in the residuary clause of his will by drawing a line through the

word with his pen, leaving, however, the word legible. He then wrote in the will over the obliterated word "*sons*" the word "*daughters*" with his initials, thus clearly manifesting his intent to effect the change in his will. After the testator's death one of the subscribing witnesses, who drew the will, testified that the changes had been made by the testator since the execution of the will. Are the sons or the daughters, if either, entitled to the residuum? Give your reasons.

140.

15. A and B, citizens of New York, entered into a contract in writing, by which A sold and agreed to convey to B a tract of land in the State of Pennsylvania. B duly tendered to A the purchase money and was entitled to a conveyance of the land, which A refused to make. B sues A in the Supreme Court, City and County of New York, for specific performance of the contract. A claims that the Court has no jurisdiction and consults you. What is your advice to him? State fully.

141.

16. A executed to B a mortgage upon his farm. Subsequently, A gave to C a second mortgage upon the same farm. A did not pay the interest on the mortgage to B, and B has begun a foreclosure of his mortgage, by advertisement, under the statute. If the foreclosure goes to sale, C's mortgage will be worthless, because the farm will not sell for more than the amount of B's mortgage. C retains you, states facts which show that B's mortgage is invalid and asks you to assert his rights and protect his interests. What will you do? State fully.

142.

17. A duly conveyed to B his farm, A remaining in possession of the premises. B neglected to record the deed. Subsequently, A became indebted to C in the sum of \$2,000, which was due and payable. To secure this indebtedness after it was due, but without any agreement to extend or suspend time of payment, A gave a mortgage upon the land which he had formerly conveyed to B. C took the mort-

gage in good faith and without knowledge of the deed from A to B. C begins a foreclosure of his mortgage. B asks you whether he has a good defense. What do you advise him? State fully, giving your reasons.

143.

18. Upon the formation of the Z company, a manufacturing corporation, A subscribed for 100 shares of the capital stock at \$100 per share, but paid in only 50 per cent. of the amount of his subscription. The company became insolvent and B, to whom the company owed \$5,000, begins a suit against A, to recover the amount, on the ground that A owed that amount upon his subscription to the stock held by him when B's debt was contracted. A defends. Who wins? Answer fully, with your reasons.

144.

19. A made a promissory note, payable to his own order, which he indorsed and then procured thereon the indorsement of B, a manufacturing corporation, for his accommodation. The note was discounted before maturity by A at the X Bank, and the proceeds thereof placed to the credit of his account in the X Bank. The note was dishonored, and due notice thereof given to B. Thereupon the X Bank brought action against both A and B to collect the note. Judgment for and against whom, and for what reason?

145.

20. A owned \$10,000 full paid stock in the X corporation, which was indebted to B, a laborer, for services, in the sum of \$500. B gave to A notice in writing within thirty days after the termination of his services, as required by the statute, that he intended to hold him liable for his debt of \$500, and without taking any other proceedings, at the expiration of thirty days more, he brought action against A for his claim. State whether or not B can recover in the action. If not, why not?

146.

21. While A and B, husband and wife, are living together, B, the wife, inherits a valuable house and lot in the City of X, wherein thereafter, the husband and wife reside and have a son born unto them. Subsequently B procured an absolute divorce from A, and then died intestate, owning said property, leaving A and her said son her surviving. What are the respective rights of A and the son in the property? State your reasons.

147.

22. A, having a wife, B, and a child, issue of the marriage, was duly sentenced to imprisonment for life, on a conviction for murder in the second degree. He was duly pardoned, after having served five years of the sentence, and desired to resume marital relations and live with his family, but B would not consent, or allow him to see the child. Thereafter B married and lived with C, retaining custody of the child. Thereafter A brought an action against her for an absolute divorce on statutory grounds, and for the custody of the child? 1st, What are A's rights in the premises? 2d, What, if any, legal irregularities is B guilty of?

148.

23. A and B were husband and wife; while living together, A committed a grievous assault and battery upon B, without cause or provocation, whereby she was injured for life. The wife brought an action against A to recover damages for injuries sustained. A demurred to the complaint (which set forth the facts) on the ground that the complaint did not state facts sufficient to constitute a cause of action. Judgment for whom? State your reasons.

149.

24. A was put on trial for the murder of B. The indictment contained two counts; the first charging murder in the first degree, while the second count charged murder in the second degree. The jury found him "guilty as

charged in the second count." On appeal, the judgment of conviction was reversed and a new trial ordered because of errors committed. On the second trial, the Court being requested by defendant's counsel, refused to instruct the jury not to find a verdict on the first count, to which refusal exception was taken and the jury found the defendant guilty of murder in the first degree. Will the conviction stand or not, and for what reason? State fully.

150.

25. John Doe had been duly committed to jail to await the action of the grand jury on a charge of arson. You are his counsel. Doe has made application to the Sheriff having him in custody, to be allowed a private interview with you as his counsel, which the Sheriff has absolutely refused. What, if any, right has John Doe in the premises, and, if any, on what is it based and how will it be enforced?

EXAMINATION PAPER.**No. 4.****FORENOON — FOUR HOURS.**

151.

1. Draw a summons in an action for divorce with affidavit of proof of service thereof upon the defendant.

152.

2. Your client is defendant in an action where the county designated in the complaint for the trial thereof is not the proper county. You desire to move to change the place of trial to the proper county before answering. No papers except the summons and complaint have been served. State fully what you must do and in what manner to change the venue to the proper county.

153.

3. A young woman of property, 18 years of age, hires a horse and buggy of a liveryman to drive a distance of ten miles, returning the same day. She drives a distance of thirty miles and brings the horse and buggy back the third day thereafter seriously damaged. The liveryman consults you as to his remedy. What do you advise him? State fully with your reasons.

154.

4. A sues B upon a promissory note and B defends and sets up a counterclaim which A insists is sham and asks you to move to strike out as sham. What do you advise him, and why?

155.

5. A brought an action against B for assault, the summons having been personally served upon the defendant, within

the State. B appeared in the action and demanded service of the complaint which was served, but he did not answer. What are the necessary steps for A's counsel to take to obtain judgment against B? State fully.

156.

6. The sheriff has taken into his possession, under a warrant of attachment, a span of horses, as the property of the defendant, which are claimed by another person. The sheriff desires to ascertain the validity of the claim and asks you how he can do so. What do you advise him? State fully.

157.

7. A was the owner of a house and lot. Upon the marriage of his nephew B, A said to B, "I hereby give you this house and lot and will deed it to you." B took possession at once, occupied the premises and made expenditures in permanent improvements thereon, but the amount of such expenditures is less than the value of the rent of the premises while occupied by B. A died without having conveyed the premises to B, who continues to remain in possession. A's executor brings an action of ejectment against B, who defends. Has B a good defense? State fully with your reasons.

158.

8. A constructed a building for general manufacturing purposes and supplied it with a water-wheel and suitable gearing for propelling machinery. B purchased the premises, and also purchased of C, and set up planing machines in the building, which were operated by bands connected with shafting driven by the water-wheel. These machines were fastened to the floor for the purpose of keeping them in place while working, and each could be removed from the building without injury thereto or to any other machine. B gave his note for these machines, which he secured by a chattel mortgage upon all the machinery in the building, including the water-wheel, and gearing, which mortgage was duly filed. Subsequently he gave to D a real estate mortgage upon the building and all the machinery therein. Both C and D foreclose and

each claim the machinery. What are their rights respectively? State fully, with your reasons.

159.

9. A granted to B, by deed, a private way across his farm. Becoming angry at B, A obstructed the road so that B could not pass over it. B thereupon removed enough of the fences in A's adjoining field to enable him to pass on A's land around the obstruction. A brings an action against B for trespass. B defends, setting up the facts. Is the defense good? If so, why? If not, what should B have done?

160.

10. John Doe and Richard Roe entered into a written agreement, viz.: "I, John Doe, agree to employ Richard Roe so long as satisfactory to me at \$5.00 per day as engineer, and I, Richard Roe, agree to work for John Doe, on the terms and conditions aforesaid, and to give him two weeks notice in writing before quitting his employment or I forfeit to him \$100. (Signed) John Doe, Richard Roe."

Richard entered upon his work under the agreement, and subsequently left the employment without giving the notice, there being then due to him for his services \$100. John refuses to pay for the labor performed, and Richard sues for his \$100. John answers, admitting the service and value, but sets up the contract and alleges a breach thereof on Richard's part in that the notice required thereby was not given, and claims the \$100 forfeiture as an offset to plaintiff's claim. Richard demurs to the answer. Judgment for whom, and why?

161.

11. A and B mutually agree to marry each other on the following Christmas. Afterward, and six months before Christmas, A married C. Without any demand or refusal, B immediately and without waiting until Christmas, sued A for breach of promise. If A should consult you, what, if any, defense would you advise him he could make on the above state of facts? Why?

162.

12. A took the farm of B to work on shares in raising grain. A agreed with C that if the latter would plow the land, sow and harvest the crops, he should have one-half of his, A's, share, to which C assented, and performed his part of the agreement.

1st. What is the legal relation of A and B and the rights of each?

2d. What are the legal relations of B and C in the business and crops? Copartners or otherwise? Give your reasons.

163.

13. A and B were copartners in business, but dissolved on January 1, 1899. Notice of such dissolution was published in three newspapers, published in the city where they had their principal place of business, and in the trade papers. C, who had had actual dealings with the firm, not seeing the advertisement nor having notice of the dissolution, in good faith sold and delivered \$5,000 worth of goods, as he believed to the old firm, which were bought by A in the old firm name. He now sues A and B as partners, for the amount thereof. B defends on the ground that he was not a member of the firm when the sale was made, and neither authorized it nor was cognizant of it at any time. All of the above facts appearing on the trial, judgment for whom and why?

164.

14. A sold to B the right to make, use and sell a certain invention claimed by A to be patented, for which B gave to A his note as follows:

"\$500. NEW YORK, June 1, 1901.

"Six months after date, for value received, I promise to pay to A, or bearer, five hundred dollars, with interest. (Given for a patent right.) (Signed) B."

The note was duly transferred by A to C, for the full face value thereof, before maturity, who was a *bona fide* holder in due course. The note not being paid at maturity, C sued B

thereon, who answered, admitting the making, delivery, and non-payment of the note and then set up that A procured the note by fraud and misrepresentations, but made no claim that C had any knowledge thereof when he took the note, or that he was not a *bona fide* holder for value. C demurred to the answer. Judgment for whom, and why?

165.

15. A gave to B his promissory note as follows:

“\$1,000.

ALBANY, May 1, 1902.

“One month after date, for value received, I promise to pay to B, or order, one thousand dollars with use. (Signed) A.”

On the back of the note for A's accommodation C wrote, “I guarantee the payment of the within note.” (Signed) “C.”

A then delivered the note to B. Ten days after its maturity, payment not having been demanded of or refused by A, and no notice of dishonor having been given C, A and C were both sued on the note by B. C defends. Judgment for whom and for what reason?

166.

16. A, as an agent for, and with authority from B, sold a horse to C belonging to B with warranty. C knew that A was acting as agent for some one in the transaction, but for whom A did not disclose, as he readily would have done, had C inquired, and so was in ignorance of the name and identity of A's principal. There was a breach of the warranty and C sued A thereon to recover his damages, setting up the facts aforesaid in his complaint. A demurs. Judgment for whom, and why?

167.

17. A employed B as his agent, to purchase for him ten shares of the capital stock of a certain railroad company, at a price not to exceed par, agreeing to pay him a commission for his services. B caused ten shares of the stock of the company which he owned to be transferred on the books, and a new scrip issued therefor to A, and mailed the same to him

at par; whereupon A remitted to B the funds therefor, together with his agreed commission. About two months thereafter A first ascertained that B had sold him some of his own stock, and he then sued to have the sale rescinded and to recover from B the money paid for the stock, as well as the commission paid, not claiming that he had been defrauded. The complaint stated the facts, to which B demurred. Judgment for whom, and on what principles?

168.

18. A was surety to B for a debt to B from C. When the debt became due, C was solvent and A called upon B to bring an action upon the same. B neglected so to do, and thereafter C became insolvent. B now calls upon A to pay the debt and the latter consults you. What would be your advice under the circumstances disclosed?

169.

19. A and B jointly interested in a transaction, executed a bond with C as their surety. D, at the request of the principals, paid the bond, and now sues A, B and C to recover the amount paid thereon. They consult you. What are their respective rights and liabilities, if any?

170.

20. A policy of life insurance on the husband's life, is payable, in the event of his death, to the wife, if living, if not living, to their children. The husband and wife by an instrument in writing assign the policy to A in payment of their joint debt. Thereafter the wife died; then the husband. When the policy was issued, and at the time of the death of the husband, they had three children living. Question arises to whom should the policy be paid? The children claim it, so does A. What would be your advice?

171.

21. A policy of fire insurance, insured A's stock of horses, cattle, and sheep, in the sum of \$6,000, two thousand thereof being on the horses, two thousand on the cattle, and two thou-

sand on the sheep. The policy provided that "this entire policy * * * shall be void * * * if the subject of the insurance be personal property and be or become incumbered by a chattel mortgage." While the policy was in force, A executed and delivered a chattel mortgage on the sheep in the sum of \$1,000. Thereafter, and while the mortgage was alive, a fire took place, and all the insured property was destroyed. There was a total loss of more than \$2,000 on the cattle and sheep respectively and of \$4,000 on the horses. State A's legal position, under the circumstances disclosed. Is he entitled to recover anything, or nothing? State fully your reasons.

172.

22. A delivered to B, a miller, 10,000 bushels of wheat, for which he agreed to deliver to him in ninety days, 2,000 barrels of flour. During the ninety days, and before the miller had begun to grind the same, the sheriff levied on the wheat under an execution issued on a judgment against the miller. A consults you. What is the nature of the transaction and A's rights and remedies, if any, under the circumstances disclosed?

173.

23. A jeweler received from A a quantity of gold coin, from which he was to make a vase. The vase was to be completed and delivered to A on January 2, 1902, and A was to pay him \$500 for his services, within sixty days thereafter. The vase was completed and ready for delivery on January 2, 1902, but before it was delivered and on that day, it was attached by a creditor of A, for a debt of more than the value of the vase completed, including the jeweler's work. The jeweler protested against its being taken and claimed a lien thereon. He now consults and asks you to obtain for him, if possible, its return. What would be your advice?

174.

24. A sold to B 5,000 watch cases to be thereafter manufactured, at the agreed price of \$5 apiece. When the cases were delivered they were defective, which fact could be determined upon inspection. B with knowledge of their defects,

neither returned nor offered to return them, and thereafter sold the same in due course at their market value, and lost \$5,000 on the transaction. B is now sued for the contract price and consults you as to his right to offset his claim for damages. What would be your advice?

175.

25. A met B and said to him, "For what will you sell to me 500 barrels of flour?" B replied: "Five dollars a barrel, cash on delivery." A said, "All right, I accept; deliver the flour at my storehouse to-morrow morning." Flour was worth but \$4 a barrel when B tendered the flour to A, the next morning, which A refused to accept at the price agreed upon. B now consults you as to what he can or should do under the circumstances. What would be your advice?

EXAMINATION PAPER.**No. 4.****AFTERNOON — FOUR HOURS.**

176.

1. Upon the trial of an action against A, B and C, former members of a firm which had been dissolved, A, who had not appeared in the action, was called as a witness for the plaintiff and was subsequently called and examined as a witness for the defendant, B, who had appeared and answered. Thereupon the plaintiff proved, under objection and exception, A's declarations made after the dissolution of the firm, in conflict with his testimony as a witness for B. Was the exception well taken? Give your reasons.

177.

2. Upon the trial of an action for groceries sold and delivered the plaintiff, a tradesman, who kept no clerk, produced his account books containing entries of the items upon which he sought to recover against the defendant, and offered them in evidence. Counsel for the defendant objected and the court sustained the objection. What was the objection and what must counsel for the plaintiff do to have the books admitted in evidence? State fully.

178.

3. A brings an action of ejectment against B. The records of conveyances in the office of the County Clerk show a complete chain of title in A, except that there is no recorded conveyance from one of his predecessors in the title to another in the year 1870. This deed is in A's pos-

session. The deed was not acknowledged, the grantor and the witnesses are dead, and no one knows their signatures. How can he prove his title? Give your reasons.

179.

4. A entered into a contract in writing with B, wherein it was stated that A agreed to sell and convey to B certain timber lands therein described at an agreed price. B paid A the price, and A conveyed to B the requisite number of acres of land, but B thereafter discovered that the land conveyed to him had no timber upon it. Upon the trial of an action by B against A, upon the contract, for fraud, B attempted to prove that prior to the making of the contract, A stated to him that the lands he was to convey were heavily timbered, and pointed out to him heavily timbered lands which he said were like those he was to convey to B. The court excluded the evidence on the ground that the contract was the best evidence and could not be varied by oral evidence of acts and declarations prior thereto. Was the ruling right or wrong? State fully your reasons.

180.

5. A sues B to recover damages for injuries alleged to have been sustained by being struck by a wagon driven upon the sidewalk by one of B's servants. Upon the trial, A called C, who testified only that he drove B's horse and wagon on the occasion in question. B, as a part of his case, recalled C, who testified that he did not drive on the sidewalk. On cross-examination by A, C denied that at a certain time and place after the alleged accident, he had said to D that he did drive on the sidewalk. After B rested, A called D as a witness to prove what C denied saying on his cross-examination. B objected to the evidence. What was the ground of the objection, and what was the ruling of the Court? State fully with your reasons.

181.

6. In the perpetration of a fraud in the pretended sale and conveyance of lands, a notary public was induced to wilfully

certify falsely that the execution of a deed of conveyance of the land was acknowledged by the grantor named therein before him. Of what crime is the notary guilty?

182.

7. A prisoner, upon his arrest, made a confession to the officer having him in custody, admitting his guilt. This confession was made after the officer had told the prisoner that he could make him no promise, but that he would use his influence in his behalf if the prisoner should make any disclosures which would be of benefit to the government. The officer testified that he thought the statement was voluntarily made by the prisoner. Upon the trial of the prisoner the confession was proved against the objection of his counsel. The prisoner was convicted. Will the conviction stand? State fully with your reasons.

183.

8. A and B confederated to rob C, who had set his valise down on the sidewalk and was looking for a certain house on the street. A assaulted C with force and violence while B opened the valise without being observed by C, abstracted a watch and closed the valise so that it appeared to be in the same condition as before. C did not know of the loss until an hour later. Meantime A and B escaped. Later B is arrested, indicted and convicted of robbery. Counsel for B insists that B used no force or violence and is not guilty of the crime charged. Will the conviction be sustained upon appeal? State fully, with your reasons.

184.

9. The railroad train on which A was a passenger was thirty minutes late owing to a defect in the locomotive, which had existed and been known to the railroad company for two weeks. The train passed through a thunderstorm and the car wherein plaintiff sat was struck by lightning and he was severely injured. In an action of negligence brought by A against the railroad company to recover his damages, he successfully established that if the train had been on time,

it would have escaped the storm. What do you say about the liability of the company, and state your reasons.

185.

10. A, B and C were sued by D for a joint assault and battery against him. After issue joined, A paid D \$500 in satisfaction of his wrongful act, taking back a release and discontinuance of the action as against himself. At the trial, this being proven, counsel for B and C moved to dismiss the action against them. Motion denied and case went to the jury which gave a verdict for damages against B and C. Upon exceptions taken by them to the ruling of the court, B and C appealed from the judgment. Will the judgment be affirmed or not? State your reasons.

186.

11. A sues B to recover damages for a malicious assault and battery committed upon his person by B. On the trial, evidence is given on the part of the defendant to prove that, at the time of the assault, B was insane. The Court leaves the issue to the jury, and plaintiff's counsel requests the Court to charge that the defendant even if insane is liable for damages actually inflicted and is also liable for punitive damages, to both of which propositions defendant's counsel duly took exception. What do you say as to the correctness of the two propositions charged respectively?

187.

12. A had and left him surviving a son, B, and two daughters, C and D. Being the owner of two houses and lots and considerable personal property, which constituted his entire estate, he made his last will and testament whereby he devised unto each of the daughters a specified house and lot, and bequeathed the remainder of his property to his son, B. After making the will, the house and lot devised by the terms thereof to C were taken from A by the X Railroad Company in condemnation proceeding which were vigorously opposed by A, he receiving an award of \$10,000, which he immediately invested in the capital stock of the X Bank.

After his death, the stock was found in an envelope with the will and a memorandum signed by him, stating that it was his "wish and intention that the stock should go to C in place of the real estate for which it stood and represented and of which it was the avails." Under the will which was admitted to probate, how was the property distributed? State your reasons.

188.

13. A makes a will and leaves all his property, consisting exclusively of real estate, to his only child, X. He thereafter marries, has another child, and dies without changing his will, leaving his widow and his two children his only heirs at law him surviving. His will is offered for probate and objection is made thereto. What is the situation thereof and what disposition is made of his estate?

189.

14. The will of A provided that in case any legatee contested the will on any ground whatsoever, the legacies bequeathed to such contestants should be held revoked and be null and void, and the same should go into and form a part of his residuary estate, and be distributed accordingly. B and C, both being legatees, contested the will. C, being a minor, contested by his guardian appointed for that purpose. The will was admitted to probate, C still being a minor. Can B or C, or either of them, recover their legacies, or not? If so, for what reason, if not, why not?

190.

15. A was the owner of a vacant lot adjoining his family residence. He entered into a written contract of sale therefor to and with B, relying upon the representations by B that he was making the purchase for the purpose of erecting on the lot a residence for himself and family, and that the plans and specifications therefor were already made. B paid \$1,000 cash at the time, and the balance of the purchase price B was to pay on the last day of the following month, and on its receipt A was to execute and deliver the deed therefor. B immediately commenced grading the lot and

had expended \$500 therefor when the appointed time for payment of the balance of the purchase price and the delivery of the deed arrived. Meanwhile A had ascertained that the said representations by B were false, and that, at the time he and A made the contract, he, B, had already entered into a written contract with C for sale to him of the lot, conditioned on A's selling to B, whereon he, C, was to erect and maintain a livery stable, which would be offensive and detrimental to A. B duly demanded his deed at the appointed time, tendering the balance of the purchase price, which A refused to accept, or to give the deed. B sues for specific performance. A defends. Who wins? State your reasons, and the equitable maxim involved.

191.

16. A holds a mortgage upon three parcels of land. The owner sells one parcel to B, thereafter another to C and at the time of the foreclosure by A of the mortgage, he still owns a third parcel, which is insufficient to pay and satisfy the mortgage in full. In the foreclosure action, A makes B, C and the owner of the unsold part parties to the foreclosure. B consults you as to his rights. What are they, if any? What would you advise B to do under the circumstances for the protection of his property?

192.

17. A vessel is stranded at sea with imminent danger that unless it be, at once, relieved by lessening its cargo, not only the vessel, but the entire cargo would be lost or destroyed. In the emergency, 500 tons of steel belonging to B were thrown overboard and lost, and thereby the vessel was relieved, and the vessel, as well as the balance of the cargo, which belonged to several different importers, was saved. A demurs to being made a sacrifice for others. Against whom, if any one, has he a remedy, and what, if any, is it? What equitable maxim applies?

193.

18. The board of directors of the X corporation consisted of three persons. It became necessary to pass at once,

a resolution authorizing the treasurer to execute a corporation note for a special purpose, which required corporate action, and its secretary drew up such a resolution and saw each director in turn, at his place of residence and had him assent in writing to the passage of the same — which was accordingly entered upon the minutes of the corporation as having been duly adopted by the board of directors. Question arises as to the validity of the note. What is your opinion? State your reasons.

194.

19. The X corporation was unable to pay its obligations as they became due in the regular course of business. At that time it was indebted to A, its president, on account of salary, in the sum of \$10,000, and it transferred to him, in payment of his claim, certain of its personal property of that value. Your client, a creditor of the company, which has no visible assets, consults you as to the validity of the transfer, and his rights in relation thereto, if any. What would be your advice?

195.

20. A foreign manufacturing corporation desires to do business in this State. Are there any limitations on that privilege? If so, what?

196.

21. In an action for an absolute divorce, complaint charges the wife with having committed adultery with A. A is innocent and consults you as to whether there is any method by which he can protect his reputation in the premises. What would be your advice?

197.

22. An infant sold his real estate to A, for its full and fair value and received the purchase price therefor, which he thereafter squandered. He repudiated the sale, when he became of age — and now brings an action against the vendee to recover the possession of the property, but he does not tender nor offer to restore the purchase price — for the

reason that he had spent it and therefore it is impossible for him to do so. Can he, under the circumstances, maintain his action? If so, why so; if not, why not?

198.

23. On December 15, 1899, a wife wilfully deserted her husband, and refused to live with him, and he gave notice to X, a tradesman, not to sell to her on his account. The wife on January 1, 1900, offered to return to the husband and he refused to receive her. X, with notice of the facts, sold goods to the wife from the day of her desertion to February 1, 1900, and now sues to hold the husband therefor. State the law governing the husband's liability, if any.

199.

24. The X Electric Railway Company is the owner of certain lands and premises in the City of A, which are necessary to the proper use and enjoyment of its franchise. The Y Steam Railroad Corporation finds that the said premises are absolutely essential to the proper use and enjoyment of its franchise—and desires to condemn the same for its corporate purposes, and asks your advice. What would be your advice?

200.

25. A committed the crime of grand larceny on January 1, 1900. At that time the Statute of Limitations for the prosecution of that offense was one year. In December, 1900, the Legislature made the time for finding indictments for grand larceny, two years, and in February, 1901, A was indicted, tried for the crime, found guilty, and sentenced to prison. What is your opinion as to the validity of the sentence? Give your reasons.

EXAMINATION PAPER.**No. 5.****FORENOON — FOUR HOURS.**

201.

1. Jane Doe is an infant and is the owner of a promissory note made to her order by John Stiles. The note is past due, Draw a complaint upon the note in an action against the maker.

202.

2. You are retained to bring an action for libel against the publisher of a newspaper; you serve a verified complaint, but the attorney for the defendant serves on you an unverified answer. What will you do with it? State fully, with your reasons.

203.

3. A complaint in an action for negligence alleged that the defendant excavated a pit in a street and left the same unguarded, in consequence whereof the plaintiff, while passing along the street, fell into the pit and was injured. The answer contained three defenses, separately stated. (1) The contributory negligence of the plaintiff; (2) a settlement or compromise of the plaintiff's demands; (3) a denial of each and every other allegation in the complaint not before specifically admitted, qualified or denied. Upon the trial the plaintiff did not prove that the defendant made the excavation or that the same was in a public street, and the defendant moved for a dismissal of the complaint for that reason. What should be the ruling of the Court? State fully with your reasons.

204.

4. When is a reply necessary, and what is the effect of an omission to serve a reply when a reply is necessary?

205.

5. An injunction order has been granted *ex parte* unjustly restraining your client. You desire to have it vacated *ex parte*. What will you do? State fully.

206.

6. A Surrogate's Court, having cognizance of a certain matter, is about to exercise powers in excess of its jurisdiction, to the detriment of your client. How, and by what authority can you prevent it? State fully.

207.

7. A deed of conveyance of real estate situated in New York is executed and acknowledged in Boston, Mass. Draw a proper acknowledgment under the laws of New York and state what must be done to entitle the deed to be recorded in New York.

208.

8. A has taken a mortgage for \$5,000 upon B's farm to secure the payment of money loaned to him. A has neglected to record his mortgage until a judgment for \$1,000 has been obtained against the owner of the farm by C, and duly docketed in the office of the County Clerk. The farm is not worth more than the amount of the mortgage and A asks your advice as to his rights. What do you advise him? State fully.

209.

9. A farmer devised his farm to his son and daughter and their heirs to be held in joint tenancy. The son died intestate, leaving a son, A, and thereafter the daughter died intestate leaving two sons, B and C. B dies intestate leaving a daughter, D. Your client desires to purchase the farm. From whom can he obtain title? State fully, with your reasons.

210.

10. A met B and said to him: "I will give you \$5,000 cash for your stable and the horses therein contained, and here is \$1,000 to bind the bargain." B said, "I accept, and will give you a deed of the real estate and a bill of sale of the horses to-morrow at ten A. M." A replied, "All right; I will give you the balance of the money then." B took the \$1,000 and on the next day tendered the deed and bill of sale, as agreed; but A refused to complete his purchase and demanded the return of his \$1,000. B consults you. What are the rights of A and B, respectively? State your reasons.

211.

11. A and B became engaged to be married, A at the time being a married man, which fact was not known to B. B subsequently discovered the fact of A's marriage, and thereupon, without making any demand upon A, and he not having refused, sued him for breach of promise to marry. Can she maintain the action or not? State your reasons.

212.

12. A and B are copartners conducting a mercantile business. The sheriff receives an execution of \$500 against A and levies upon his interest in the goods of the firm. Two days after such levy the sheriff receives another execution of \$1,000 against A and B for a copartnership debt. The sheriff realizes on the sale of the copartnership stock levied upon, \$900, and he is now in doubt as to how the money should be applied. What would you advise him, and why?

213.

13. A was not a copartner in fact of B in a certain business, but held himself out to be such by his acts and declarations in order to give credit to B. C sold and delivered to B \$1,000 worth of goods for use in that business, but, at the time, he had no notice or knowledge of A's acts or declarations. C brings his action against A and B to recover for the goods sold, claiming that A is a partner because of

his said conduct and declarations. Will C recover judgment against A or not, and state the rule governing the transaction?

214.

14. A sold to B the right to make, use and sell a certain invention claimed by A to be patented, for which B gave to A his note as follows:

"\$500.

NEW YORK, June 1, 1901.

"Six months after date, for value received, I promise to pay to A, or bearer, five hundred dollars, with interest, at the First National Bank of the City of Albany.

(Signed) B."

Before maturity A, without indorsement, transferred and delivered the note to C for value, who became the owner and holder in due course. The note was dishonored. What, if any, is A's liability for the transaction? State your reason.

215.

15. A being indebted to C and D, copartners, in the sum of \$1,000, gave to the firm his note for the amount, payable six months after its date. C and D immediately indorsed the note in and by their firm name, and discounted the same at the X Bank. Thereafter and before the maturity of the note C and D dissolved partnership. After such dissolution, which was known to the X Bank, the note was dishonored and notice thereof duly given to D, but not to C. X Bank sues both C and D as indorsers. C defends. Judgment for whom and on what grounds?

216.

16. A, as agent for and under the direction of B, employed C to reconstruct a coach belonging to B for a stated sum. C knew that A was acting as agent for some one in the transaction, but for whom A did not disclose, as he would readily have done had C inquired, and so was in ignorance of the name and identity of A's principal. When C had finished the work he called upon A for his pay. A disclaimed liability therefor and then disclosed B as his principal, for

whose benefit the work had been done, but C sued A to recover for his services, setting up the facts in his complaint, to which A demurred. Judgment for whom and why?

217.

17. A employed B, a real estate broker, to find a purchaser for his farm, the price and terms to be settled between A and the purchaser. C, wanting to purchase a farm, had also employed B to find for him, C, a farm, the price and terms therefor to be fixed and agreed upon between C and the seller. Each party, without knowledge thereof by the other, agreed to pay A a commission. B brought A and C together, and they personally negotiated with each other and concluded the sale of A's farm to C. At the conclusion of the sale A and C first learned that B had been acting for both of them under an agreement from each to pay him a commission, and both A and C then refused to pay B the commission to which they had respectively agreed. B consults you as to his rights in the case. What advice do you give him, and for what reason?

218.

18. A owed B \$10,000 for goods sold and delivered. B had in his possession, as collateral security for the debt, securities, the property of A, to the value of \$10,000. A was unable to pay the debt, and, desiring more time, as well as the privilege of disposing of the collateral, he induced C to become his surety for the debt, and thereupon B surrendered the collateral to A. C knew nothing about the collateral and became surety regardless of the fact. When the debt became due A was insolvent and B demanded of C that he pay the same. C then, for the first time, learned about the collateral and consults you as to his rights, if any, in the premises. What would be your advice?

219.

19. A was surety to B for a debt of \$10,000 due to B from C. The debt was not paid at maturity and A, on demand of B for its payment, extinguished the same by the

payment of one-half of its amount to B. The surety now sues C for \$10,000, the amount of the original debt. What would be your advice to C under the circumstances?

220.

20. A took out a policy of insurance on his life in the sum of \$10,000, payable on his death to B, an old college friend, who was not related to him, and who had no insurable interest in his life. When A died the company refused to pay the policy, claiming that it was void originally as a wager policy, but offered to return to A's estate all the premiums paid, with interest. B consults you. What would be your advice?

221.

21. A policy of fire insurance on B's dwelling-house provided "that this entire policy, * * * shall be void * * * if any change take place in the title or possession of the subject of insurance." While the policy was in force B executed and delivered to C a deed of the property, absolute in form, but, in fact, given as security for a debt. B remained in possession, but while the deed being on record was outstanding a fire took place and the premises were damaged in the amount of the policy. The company refuses to pay because of the deed and B consults you. What would be your advice?

222.

22. A delivered to B, a miller, 10,000 bushels of wheat, to be ground, the latter to return to A therefrom 2,000 barrels of flour, the balance, if any, to be retained by the miller for his services. While the wheat was in the possession of the miller it was levied upon by the sheriff under an execution issued on a judgment recovered against him. A then consults you about getting his wheat back. What is the nature of the transaction, and what would be your advice?

223.

23. A warehouseman received the goods of A on storage for hire and delivered to him a receipt therefor, which ex-

empted him from liability for loss or damage thereto by fire. Subsequently the goods were destroyed by fire while in the warehouse and A sued the warehouseman for their value. Can A, under any circumstances, maintain his action? If so, what must he establish; if not, why not?

224.

24. A sold to B 5,000 watch cases warranted to be like sample exhibited, at the agreed price of five dollars each. The goods were in existence and were delivered on the day specified therefor. The watch cases were not equal to the sample, a fact which B determined at once, upon inspection. B retained the goods, and neither returned nor offered to return the same, and subsequently sold them, in due course of business, for their actual value, by reason of which he lost \$5,000 on the transaction. B is now sued for the contract price of the goods and consults you as to his right to offset against the claim, his damages as hereinbefore set forth. What would be your advice?

225.

25. A, by a valid contract in writing, made and executed on January 2, 1901, sold to B 10,000 tons of coal, at the agreed price and value of five dollars per ton, the same to be delivered to B at his warehouse in the city of X on December 1, 1901. On February 1, 1901, B met A and said: "I've changed my mind about that 10,000 tons of coal, you need not deliver it." A consults you. If B will not accept the coal, he does not want to tender it because of its bulk, nor does he desire to wait until December first to know B's final action. What would be your advice, and what can A do under the circumstances?

EXAMINATION PAPER.

No. 5.

AFTERNOON — FOUR HOURS.

226.

1. Upon the trial of an action for conversion against A and B as joint tort-feasors, the plaintiff gave no direct proof against either of the defendants, except the admissions of A, which were admitted against objection and clearly showed that both A and B had jointly committed the tort act. A verdict was rendered against A and B. What should be the result of an appeal? Give your reasons.

227.

2. On the trial of an indictment for felony against an infant, the prosecution proved the act and rested. The defense then proved that the accused was ten years old and rested. No other evidence was given. The attorney for the prisoner then moved for a direction to acquit, and the prosecution asked that the case be sent to the jury. What should be the decision of the Court, and why?

228.

3. A brings an action against B to recover damages inflicted by B on C, his wife, which caused her death. Upon the trial A was asked to state a conversation between him and C, which occurred just before her death, to the effect that it was B who inflicted the injuries. This was objected to by counsel for B. No other proof against B could be procured. What was the ruling of the Court and why? State fully, with your reasons.

229.

4. In preparing a case for trial, as counsel for the plaintiff, you have interviewed a man who is cognizant of certain facts in the case. He has stated to you that he saw the defendant sign a certain paper, which fact you desire to prove. Upon the trial you call him as your witness, ask him if he saw the defendant sign the paper in question, and he answers: "No, I did not see the defendant sign it; I saw A sign it in the defendant's name." You thereupon interrogate the witness in respect to his previous declarations. Counsel for the defendant objects, upon the ground that you are cross-examining and impeaching your own witness. Should objection be overruled or sustained? Give your reasons.

230.

5. A, the publisher of a newspaper, is defendant in an action for libel brought by B upon a statement published in A's newspaper to the effect that B is threatened by suit for breach of promise by a young lady prominent in society circles and that B and his friends are attempting to bring about a reconciliation, but the young lady insists on B marrying her. The complaint did not aver special damages. On the trial B offered to prove that at the time of the publication by A he was a married man. This was objected to by the defendant; the objection was overruled and the evidence was admitted over the defendant's exception. Was the exception well taken? Give your reasons.

231.

6. You have been assigned by the Court to defend a prisoner indicted for manslaughter, and you are preparing for trial. Your client has no money. You cause an important witness to be subpoenaed, but he refuses to attend the trial, unless he is paid witness fees. How can you secure the attendance of the witness? State fully.

232.

7. A is driving along a country road and overtakes B, a stranger, who is on foot, and invites him to ride. B accepts

the invitation and deftly picks A's pocket of his purse containing \$100 without A's knowledge. A discovers his loss, accuses B of taking it and demands its return. B leaps out of the wagon and tries to escape, but A follows him, and B, in order to retain possession of the stolen property, draws a revolver and intimidates A and makes good his escape. What is the highest degree of crime with which B can be charged? Give your reasons.

233.

8. Upon the trial of a prisoner for burglary the evidence produced by the prosecution and defense was conflicting. The Court charged the jury that they must carefully weigh the testimony submitted in favor of the people and the defendant and determine the question of the guilt or innocence of the prisoner upon the preponderance of evidence. Counsel for the prisoner excepted to the charge. The prisoner was convicted. State whether or not the charge was erroneous. Give your reasons.

234.

9. A conductor on the X Railroad, while in charge of the train, detained by force a passenger and refused to allow him to alight at his station because he believed him to be Y, a notorious criminal, for whose arrest the State had offered a large reward. The passenger, who was not Y, was subsequently identified as a reputable citizen by several other passengers and finally set at liberty by the conductor. The passenger brought an action against the railroad company for damages for his arrest and detention, and the question arises as to the liability of the company. State your opinion and the reasons therefor.

235.

10. A feloniously stole B's horse and was thereafter sued by B in an action to recover its value. A did not defend and B obtained judgment by default. Execution was issued on the judgment, which was returned unsatisfied. In the meantime A presented the horse as a gift to C, who knew all the facts concerning A's title. B now brings an action in replevin against C to obtain possession of the horse. If A had de-

fended, could he have prevented judgment, and has C any defense to the action in replevin? State your reasons.

236.

11. A brings an action against B, setting forth in his complaint all the necessary allegations constituting his liability to X for malicious prosecution, and then an allegation of the assignment by X of that cause of action to A, the plaintiff. B interposes a demurrer to A's complaint as not stating facts sufficient to constitute a cause of action. Judgment for whom, and on what ground do you base your answer?

237.

12. A devised and bequeathed his entire estate both real and personal, each of the value of \$50,000, to the X Asylum, a benevolent and missionary society organized under the act of 1848 (chap. 319, Laws 1848). His will was made on January 3, 1902, and he died on February 4, 1902, leaving no wife, child or parent him surviving; his only heir-at-law and next of kin being a sister. Question arises as to the validity of the will. What do you say. Give your reasons.

238.

13. A makes a will and by it bequeaths his entire estate, consisting of \$30,000 in government bonds, in the manner following:

Five thousand dollars to his only child, X, and the remainder to his wife. Thereafter he has another child born unto him and dies without changing his will, leaving his two children and his wife his sole heirs at law him surviving. What is the effect of his death and how will his estate be divided?

239.

14. A, who was but twenty years of age, made her last will and testament whereby she bequeathed all her personal property, amounting to \$10,000, to B, and devised her real estate, it being of the same value, to C, both being her brothers. She left her surviving a husband, to whom a child was born alive,

issue of her marriage, also a father, beside her two brothers. Her mother and the child were dead and she left no living descendants. The real estate did not come to A on the part of her mother. What do you say as to the will being valid or not? If the will is probated, how will the property be divided or descend?

240.

15. A and B entered into a written contract whereby A sold and was to convey to B a valuable house and lot on the following day, when B was to pay the purchase price and take his deed from A, and the contract was to be completed. That night, without the fault of A or B, the house, which was nine-tenths of the value of the property, burned and was totally destroyed. In whom was the equitable title at the time of the fire, and upon whom does the loss fall, and for what reasons? What equitable maxim applies?

241.

16. A and B sold and conveyed to C certain real property for \$12,000. One-half the purchase price was paid down, and for the other one-half C made separate mortgages to A and B for \$3,000 each. The two mortgages were recorded at the same time, but it was orally agreed between A and B at the time of the transaction, in consideration of A's accepting the mortgage, that his mortgage should have preference over B's. Subsequently B assigned his mortgage to X, who paid full value therefor and took the mortgage in good faith, believing the two mortgages to be equal and concurrent liens on the property. In an action by A to foreclose his mortgage he made X a party defendant, claiming that X was a subsequent lienor. X defends, insisting that the mortgages are equal and concurrent liens. How will it be decided? Give your reasons.

242.

17. A, who has a valid claim against B, consults you in regard to collecting it. You investigate and find that B is insolvent, having just transferred a valuable house and lot to

his wife without consideration. What course of legal procedure would you follow to collect the debt? State fully, giving each step of your proceeding in its proper order.

243.

18. The annual meeting of the X corporation is required by its by-laws to be held on October tenth in each year, at which time a board of directors is to be elected. It failed to meet during the years 1899, 1900 and 1901, and the board of directors elected in 1898 is still acting. What is your opinion of the situation in so far as it concerns the validity of the acts of the board of directors since October 10, 1899? Give your reasons.

244.

19. A was in the employ of the X corporation under a contract of service for one year from January 1, 1900, at the annual salary of \$1,200, payable monthly. On the 1st day of July, 1900, the X corporation consolidated with another corporation, known as the Z corporation, and became merged therein, and A was thrown out of employment. On January 1, 1901, A began an action against the X corporation to recover for the six months' salary due and unpaid on his contract. Can he maintain the action? If so, why so? If not, why not?

245.

20. Your client is a judgment creditor of a stock corporation and desires to bring an action against the stockholders of record on a certain day to enforce his judgment. He does not know who the stockholders are and asks your advice as to how to obtain the names thereof. What do you say?

246.

21. A husband procured from his wife a written confession of her adultery with X and asks you to bring an action for divorce predicated thereon. He has no other evidence. What would be your advice to him?

247.

22. An infant contracted with A to work for him for one year at the agreed wages of fifty dollars per month, payable at the end of the term. He worked for six months and quit without cause. His guardian now sues A for \$600, being for the six months' work, at \$100 per month. A consults you. What are the rights of A and the infant under the circumstances disclosed?

248.

23. X, an invalid, boarded with A, who maintained the house. A's wife, while attending to the household duties and engaged in no other occupation, nursed A, with the knowledge and consent of her husband. The services rendered by her were reasonably worth \$500, for which sum the husband brought suit, the wife making no claim therefor. Question arises as to whom did the claim belong under the circumstances, to the wife or to the husband? What do you say? Give your reasons.

249.

24. The Legislature passed a law entitled "An Act to Provide for an Electric Light System in the Village of X." The act consisted of fifteen sections, fourteen of which related to the establishment of the electric light system. Section fifteen thereof read as follows: "Sec. 15. The office of overseer of the poor of the village of X is hereby abolished." The overseer had but served one year of a three-year term. He now consults you as to the right of the Legislature to abolish his office during his term and as to the legal effect of the above act. What do you say? Give your reasons.

250.

25. An assessment for a local improvement was levied upon the property of A and proceedings were taken to sell the same, because of the non-payment thereof. The act of the Legislature under which the assessment was made provided as a condition to its validity that the advertisement for bids to do the work should be published twice a week, for three

weeks, in three newspapers published in the town where the property was situated. On investigation it was found that the advertisement had been published in but one newspaper, and then only once, and that a subsequent Legislature had passed a law confirming, validating and relevying the assessment as made, notwithstanding the fact that the bids had not been advertised for as required by the original act. Your opinion is asked as to the validity of that law. Give your reasons.

EXAMINATION PAPER.

No. 6.

FORENOON — FOUR HOURS.

251.

1. Your client is sued for goods sold and delivered. He brings you the complaint and a receipted bill for the account therein set forth. Draw an answer, without verification.

252.

2. The bids to do and perform a public contract have been opened. The statute requires that the same be let to the lowest responsible bidder. A, who is a bidder, fulfils all the requirements, yet the public board, whose duty it is to award the contract, neglects to do so. A, who wants a speedy determination, consults you. What proceeding could you take under the circumstances, and narrate the procedure thereof.

253.

3. An unincorporated political club in your district, with 300 duly elected members and a full set of officers, is indebted to your client for the rent of the building in which it meets. It owes the money and has club property. How, and against whom, can you maintain an action to recover the rent?

254.

4. Two executions against the property of X, a judgment debtor, were issued out of a court of record, and delivered to the sheriff of the county where X lived, for collection. One was in favor of A, for \$1,000, and was delivered to the sheriff for execution, on January 2, and the other in favor of B, for

\$1,000, was delivered on January 3. The sheriff made no levy under A's execution, but did under B's, and sold thereunder personal property of the judgment debtor, to the amount and value of \$1,000. Both executions still being in the sheriff's hands, A claims the proceeds of the sale. State the rule governing the transaction.

255.

5. A sued B in tort, for the wrongful conversion of certain goods. The case was tried and it was adjudged therein that there was a *bona fide* sale of the goods in question, and judgment was rendered in the action for the defendant, on the merits. Can A now sue B to recover the value of the goods? If so, why so; if not, why not?

256.

6. In an action on contract, the complaint on the face thereof, showed that the action had been commenced more than six years after the cause of action had accrued. Is it necessary that defendant, under the circumstances, should plead the statute in order to avail himself thereof? State your reasons for your answer.

257.

7. A tenant, under a lease which expired on April 1, 1902, in 1901 planted a crop of winter wheat, which could not be harvested until after April 1, 1902. In 1902, subsequent to April first, the landlord, who was then in possession, harvested the crop, which was worth \$1,000. He claims its entire ownership, as against the former tenant. The seed planted by the latter was worth \$250. State the rule of law governing the transaction, and to whom does the wheat belong.

258.

8. A executed a deed, in and by which, he granted an estate for life to B, and then an estate for life to C, to take effect upon the death of B, and then successive life estates to D, E and F, respectively, then the fee to G. Give your opinion as to the effect and validity of the deed.

259.

9. A, being about to purchase an estate from B, caused careful search to be made of the records and found that there was no claim, lien, or incumbrance thereon, on record. A few minutes before he closed the transaction, C, who had no interest and no authority in the premises, volunteered the information to A that D had and held an unrecorded mortgage on the property of \$10,000. A did not believe C, and relying upon the record, completed his purchase, and paid the full cash value of the property therefor, and put his deed on record. D did hold the mortgage, as above set forth, which is still unrecorded. What are the rights of A and D under the circumstances?

260.

10. The Z Railroad Company received from A several packages of machinery for transportation and delivery to B in Boston, and it issued to A a bill of lading which contained the provision that the packages were to be transported at the "owner's risk." A portion of the machinery was lost in transit and A brought an action against the railroad company to recover the value thereof, alleging negligence. Upon the trial the plaintiff conclusively proved the negligence of the defendant, but counsel for the defendant railroad company insisted that A could not recover because of the condition contained in the bill of lading. Who wins? Why? Give your reasons.

261.

11. On July first, A, B & Co., brokers, doing business in New York city, wrote to C, at Boston, Mass., offering to sell him 100 shares of the capital stock of the X Co., at 90, if the offer should be accepted within five days. The letter was received by C, July second, and the following day he wrote A, B & Co., accepting their offer and directing that the certificate be delivered at the office of his banker in New York, where payment therefor would be made. This letter was duly mailed, but was never received. Meantime the price of the stock rose to 150. C tendered to A, B & Co., \$9,000 and demanded the stock. A, B & Co. replied that not hearing from

C, they had sold the stock to another party at a higher price. C brings an action against A, B & Co. to recover damages for breach of contract. Can he recover? State fully, with your reasons.

262.

12. A, B & C were copartners, under an agreement wherein it was stipulated that the partnership should terminate December 31, 1900. The copartnership occupied premises upon which it made valuable improvements and by the joint efforts of the members thereof, built up a valuable good will and increased the rental value of the real estate. During the year 1900, without the knowledge of his copartners, A took a renewal lease in his own name, for his own benefit, of the premises occupied by the firm, to take effect January 1, 1901. B and C consult you as to their rights and remedies under the circumstances. What would be your advice? Give your reasons.

263.

13. C loaned to the firm of A & B, \$5,000, to be used in the firm business for one year under an agreement that C was to receive one-third of the profits of the firm during that time, and at the end of the year, if he did not then decide to become a partner, he was to be repaid his \$5,000. Before the expiration of the year the firm became insolvent and a creditor of the firm brings an action against A, B and C, as copartners, claiming, by reason of the facts stated, that C is a copartner or member of the firm. C defends. On what probable ground? Judgment for whom, and why? State your reasons.

264.

14. A made his promissory note, for value, to B, who before maturity, and for value, indorsed the note to C. A short time before the note became due, B, fearing that A would not pay the note, induced A to assign all his property to him for his protection. When the note became due, it was not paid by A, and C, who was still the holder thereof, forgot to give notice to B, as indorser, of presentation and non-pay-

ment. C brings suit against B, upon his indorsement, and B defends on the ground that he did not receive notice of presentment and non-payment. Who wins, and why?

265.

15. A duly made and delivered his promissory note to B, who indorsed the same for value to C, before maturity. The day before the note was due, A gave C his check on the X Bank for the amount of the note, asking him to send the note to him by mail. C had the check certified by the cashier of the X Bank, but did not collect it. The same day, both A and the X Bank became insolvent. The following day, the day of the maturity of the note, C caused notice of protest to be given to B as indorser. C brings an action against B, who defends. Who wins, and why? Give your reasons.

266.

16. A was employed by B to purchase for him certain real estate to be sold at public auction. A attended the sale, bid off the property in his own name, and paid ten per cent. of the purchase money in accordance with the terms of sale, without disclosing to either the owner of the real estate or the auctioneer that he was acting in the character of agent for B. Before the payment of the remainder of the purchase money became due, B became insolvent. The owner of the property demanded payment of A, which was refused. Suit is brought against A to recover the amount remaining unpaid and he defends on the ground that in making the purchase he was acting as B's agent. Is his defense good? State fully, with your reasons.

267.

17. A was the owner of a promissory note made by B, payable to the order of A. Upon the maturity of the note, A handed it, without indorsement, to C, with directions to collect the interest due and obtain from B a new note with an indorser. C obtained from B the whole amount due upon

the note in cash, principal and interest, surrendered the note to B, paid the interest to A, and absconded with the principal. A sues B for the principal. Can he recover? State your reasons.

268.

18. John Doe was elected cashier of the X Bank and before assuming office was required to give a bond to the bank for the faithful performance of his duties as cashier in the sum of \$50,000. He requested Richard Roe to become surety upon his bond but Roe refused unless John Stiles would first sign the bond as surety. Subsequently Doe presented the bond to Roe purporting to bear the signature of Stiles as surety, and requested Roe to sign as cosurety, with which request Roe complied. Doe defaulted as cashier and the X Bank brought suit against Doe, Roe and Stiles on the bond. Doe made no defense. Roe defended on the ground that he signed the bond relying upon the genuineness of Stiles' signature, knowing him to be solvent; that the signature of Stiles was forged and therefore he was not liable. Upon demurrer to Roe's answer, what should be the decision of the Court? Give your reasons.

269.

19. A leased to B a store, for five years, at an annual rental of \$1,000, the lease providing that by giving written notice thirty days before the expiration of said term, B could, at his option, continue his use and occupancy of the store for five years longer at the same rental. C, by indorsement on the lease, "for value received, guaranteed the payment of the rent stipulated in within lease." B paid his rent for the stated term of five years, gave due notice, and continued under his option to use and occupy the store. He defaulted in payment of the rent at the end of the first year of the extended term. A makes claim against C, under his guaranty, for \$1,000 rent. C insists that his liability, as surety, ended with the expiration of the stated term of five years and that he is not liable. Who is right and why?

270.

20. A insured his residence and its contents in the X Company, for the sum of \$8,000. The house was set on fire, and, with the contents, was totally destroyed by the wrongful and criminal act of B, who was amply responsible to respond for the amount of damages caused. The actual value of the property destroyed was \$10,000. Upon B being accused by A, he confessed, and immediately paid A \$10,000, his entire loss, and the latter gave him a release of all damages sustained. Thereafter A, having duly made and delivered proofs of loss, brought action on his policy against the X Company to recover \$8,000, the amount of his insurance. The X Company defends. Judgment for whom, and why, and what principle is involved?

271.

21. A authorized B to receive and receipt for \$20,000 government bonds belonging to him at Los Angeles, California, and bring and deliver the same to him at New York city, which B agreed and undertook to do. Whereupon A procured for his own benefit, as beneficiary, an insurance on the life of B, for the sum of \$20,000, for the term of one year, loss, if any, payable to him, A. One month thereafter, while B was then enroute with the bonds, under his agreement, he was accidentally killed in a railroad wreck, the bonds, however, were secured and duly turned over to A, who suffered nothing by the accident. The X Company offers to restore to A the premium paid, but refuses to pay the policy. Proofs of death have been duly made and served, and A sues the X Company to recover amount of policy. The X Company defends. On what probable ground? Who wins, and for what reason?

272.

22. A delivered to B's mill, 100 pine logs, under an agreement that B should saw the same into boards within three months, and that each party should have half the boards. When B had sawed fifty of the logs, he sold the boards

therefrom to C, intending to turn over the boards from the remaining fifty logs when sawed (which were equal, in size and quality, to those already sawed) to A, as his half under the agreement. A immediately sued B in conversion for the value of the boards sold. What was the legal relation of A and B in and to the boards sold, and who will win in the action, and for what reason?

273.

23. A procured from B, a livery man, for hire, a horse and carriage, representing that he was to drive only to the village of C and return. A drove to C, and then twelve miles beyond, to the village of D, where the horse was killed by a runaway team colliding with it. B sued A for the value of the horse, setting up only the foregoing facts in his complaint. A answers, admitting the allegations of the complaint, and then sets up affirmatively that he exercised ordinary care in the use of the horse, and that its death was not caused or contributed to by his misuse or negligence. B demurred to the affirmative answer. Judgment for whom? Give your reasons, and state the relation of A and B in the transaction.

274.

24. A sold and delivered a horse to B for which the latter was to pay one month thereafter \$500, on the condition that B might, at his option, after using the horse ten days, then immediately return it if it was not satisfactory. On the ninth day thereafter (B having in good faith made up his mind to return the horse the next day), C levied upon and afterward sold the horse on execution against B. To whom shall A look for his \$500? State your reasons.

275.

25. A negotiated with a jeweler for the purchase of a gold watch, price \$300, which was satisfactory, but wanted six months' time in which to pay, to which the jeweler assented, and it was agreed that A should give his note, without an indorser, for \$300, with interest, at six months,

therefor. The jeweler delivered the watch and requested of A, his note, when A replied, "It has just occurred to me that I have bound myself with my partner not to give notes and I cannot do it." A declined to give the note, but offered the jeweler a diamond stud of the value of \$500 as security, which the latter refused to accept, and immediately sued A for \$300, the purchase price of the watch. A defends, claiming that the debt is not due, that he purchased on six months' credit. A is amply responsible and was known so to be by the jeweler at the time of the sale. Judgment for whom, and why?

EXAMINATION PAPER.**No. 6.****AFTERNOON — FOUR HOURS.**

276.

1. On the trial of an action against a railroad company for damages for negligently causing the death of a person, the question was as to the absence or presence of the flagman from his post of duty at the time of the accident. A witness for plaintiff, who was present just after the accident, was asked to testify as to what he heard the by-standers, who saw the accident, say in the absence of the flagman, concerning his being present when the accident occurred. Objection is made to the testimony. What should the ruling of the Court be, and why?

277.

2. A, who was shot by B, was brought immediately thereafter to a hospital for treatment. His attending physician knew that A was about to die and had him make and sign the following declaration and swear to it before a notary public: "I, A, on the 3d day of January, 1902, was shot and wounded by B," declaring, in addition, the circumstances surrounding the transaction. Within an hour thereafter he died of the wound mentioned in the declaration as having been inflicted by B. B was subsequently indicted for the murder of A, and on his trial the declaration was offered in evidence by the prosecution. Objection was made thereto. What should the ruling of the court be, and why?

278.

3. A merchant claimed to have sold to a customer 100 barrels of flour, and that the same were delivered by X, a

cartman. The customer denied the delivery and stated "if X will say that he delivered the goods, I will pay for them." X stated that he had delivered the same, but the customer still refused to pay. On the trial of an action for the goods question arises as to the admissibility and effect of the cartman's statement. Is it, or is it not, admissible? State the rule and the effect, if any, of the cartman's statement on the liability of the merchant.

279.

4. You wish to prove on the trial of an action the items of an account for work done and materials furnished. Your client, the plaintiff, has no present recollection of the items, but has a memorandum of the transaction. What must you show to prove the items?

280.

5. On the trial of an action for damages for slander in stating generally that the plaintiff was a thief, the defendant offered testimony in mitigation of damages to show that on or about the day he uttered the words charged the plaintiff actually stole defendant's horse. Objection was made. What should the ruling of the Court be, and why?

281.

6. On the trial of your client for murder you wish to qualify as a juror, a talesman, who, in response to a question from the District Attorney, has testified that he has a present impression or opinion as to the guilt or innocence of the defendant. Can you do so? If so, how; if not, why not?

282.

7. A, under circumstances from which a jury could correctly infer an intent to shoot off and discharge the pistol, pointed a loaded pistol at B, who was within shooting distance. Before he shot or did anything further he was disarmed. Of what crime was he guilty, if any, and why?

283.

8. A was indicted and tried for the crime of robbery, in that being armed with a dangerous weapon, he unlawfully

took from the person of B, against his will, by means of force, violence and fear, the sum of \$500. The jury found him guilty of larceny from the person. Will the verdict stand? If so, why so; if not, why not?

284.

9. A railroad train was derailed, resulting in the injury of a trespasser on the private land of the railroad company. You are asked to advise the railroad company as to the degree or extent of care which it owed to the person injured. What is your advice? State fully, with your reasons.

285.

10. An infant of the age of seven years was injured by a railroad locomotive at a highway crossing. Upon the trial of an action against the railroad company to recover damages for the injuries sustained by the child it became necessary to determine whether or not the child was *sui juris*. How was the question determined, and upon what did it depend? State fully, with your reasons.

286.

11. A was the owner of a valuable horse which escaped from the paddock and for which A made search in vain. Subsequently the horse was taken up in the highway by a farmer. B, learning the facts, went to A, and, concealing from him his knowledge that the horse had been found, offered A twenty-five dollars for the horse, being less than ten per cent. of its value, which A accepted and gave to B a bill of sale of the same. B exhibited the bill of sale to the farmer and demanded and obtained possession of the horse. Upon learning the facts A brings an action against B to recover the value of the horse, less the amount received by him from B, on the ground that the sale had been procured by fraud. Can he recover? Answer fully, with your reasons.

287.

12. A testator in and by his last will directed his executor to turn all of his real and personal estate into cash and to

divide the proceeds thereof equally among his wife and children, share and share alike. There is \$100,000 in real estate and but \$10,000 in personalty. The widow claims dower in the real estate in addition to her distributive share. State your opinion, with your reasons.

288.

13. A made his will devising certain lands to the children of his son, George, and of his daughter, Susan, to be divided among them, share and share alike, as they severally become twenty-one years of age. George and Susan each have, two children born before the death of A and one child born after his death. What are the rights under the will of the several grandchildren? Give your reasons.

289.

14. A died leaving a will whereby his son, B, was cut off from all share in his estate. B contested the probate of the will, but was defeated and the will was admitted to probate. Upon appeal by him to the Appellate Division and to the Court of Appeals the probate was sustained. One year after the will was admitted to probate, B consults you and asks what further or other remedy, if any, he has, and how it can be applied? What do you advise? State fully.

290.

15. A instructed X & Co., his stock brokers, to sell certain shares of stock whenever the market price thereof should reach \$150 per share. That price was reached in the market, and the following day A called on X & Co., and inquired if they had sold his shares. X & Co. stated that they had not sold, as the market looked strong and they thought the stock would reach a higher price. A said nothing and went away. A few days later the market price of the stock began to decline and X & Co. sold the shares at \$125 per share. A sues X & Co. for the loss arising from the subsequent depreciation in the price of the stock. Can he recover? Answer fully, stating your reasons.

291.

16. A purchases certificates representing an interest in an illegal trust. The certificates contain a stipulation binding their holder to all the terms of the agreement on which the trust was formed. A begins an action in equity to secure, through an accounting and distribution, profits and assets alleged to have been acquired by the trust under the agreement by which it was formed. Is A entitled to the relief asked for? If so, why; if not, why not? State fully, giving your reasons.

292.

17. A person who was injured in a railroad accident settled with the railroad company, received a sum of money and gave a release of all claims and demands against the company. He believes that he has been overreached by the attorney of the railroad company in making the settlement and asks you to advise him what steps he must take to put himself in a position to obtain adequate compensation, and what remedy he has, if any. What is your advice? What equitable maxim is involved? Answer fully, with your reasons.

293.

18. A corporation authorized by its charter to engage in the telegraph and telephone business only, entered into a written contract with the city of Albany to manufacture electricity for, and to furnish electric lights for lighting the city, its streets, etc., for the term of five years, to commence six months thereafter. Two months thereafter the corporation repudiated the contract and notified the city that it should not perform. What, if any, remedy has the city against the corporation for its breach of contract, and why?

294.

19. The directors named in the charter for the first year of the X corporation, who held over and continued as directors, because of their neglect and refusal to adopt by-laws enabling the stockholders to hold an annual election for directors after the expiration of the first year, voted to and

did employ A as the corporation's attorney for the ensuing year, at a salary of \$3,000. A acted as such attorney for the year, when a new board was elected, which dispensed with his services and refused to pay him anything for his said services rendered. He sues the corporation for \$3,000. Will he recover? If so, why; if not, why not?

295.

20. The X Street Surface Railway Company had obtained the requisite consent of the municipal authorities of the city of Rochester to construct and operate its railway in West Main street of that city, but was unable to obtain the necessary consents of the abutting property-owners therefor. How, if at all, can the X Company acquire the legal right to construct and operate its road in that street?

296.

21. A husband furnished to his wife fifty dollars weekly to pay the running expenses of their home. The wife by her economy, without the husband's knowledge, during the year saved and accumulated therefrom \$700, with which she purchased in her own name a horse, carriage and harness. While the same were being delivered to their house, the wife having paid for the same as aforesaid, the sheriff levied upon and subsequently sold the whole outfit on an execution against her husband, all of which she forbade. The wife consults you as to her rights. What would you advise, and for what reason?

297.

22. A, the husband, and B, the wife, were owners of real estate, as tenants by the entirety. A procured a divorce, *a vinculo*, from B and then married C, and had a son, D, issue of the latter marriage. Then A dies intestate, leaving B, C and D him surviving. What are the respective interests of said survivors in the real estate, and how, if at all, were the interests of A and B in the real estate affected by the divorce?

298.

23. In the trial of a joint action against husband and wife for an assault upon B, the court charged the jury as follows, to wit: "The wife is liable for her wrongful and tortious acts in this case; the husband is not responsible for her acts, unless they were committed by his coercion or instigation, but it is presumed, as matter of law, where the husband is present with his wife, and, seeing, fails to restrain or makes no attempt to restrain her from the commission of such acts, that he not only consents thereto, but he instigates her to such commission and is liable therefor." State whether the charge is correct or not. Give your reasons for your answer.

299.

24. The X State Banking Association becoming insolvent, it was ascertained that it had outstanding and in circulation \$100,000 of its duly-issued bills and other general indebtedness of like amount. Its assets, after being reduced to cash, amounted to only \$100,000. The question arises how shall the assets be applied on the obligations of the bank. State your reasons. (Assume that there is no Bankruptcy Law.)

300.

25. The defendant was regularly tried on an indictment for burglary. Evidence for and against was given. The jury acquitted. The presiding judge set the verdict aside as against the weight of evidence, as it clearly was, and ordered a new trial. The defendant appeals. With what result, and for what reason?

EXAMINATION PAPER.

No. 7.

FORENOON — FOUR HOURS.

301.

1. A asks you to commence, by the service of a copy of the summons only, an action against B to recover a penalty given by statute. Draw a summons in the action to serve upon the defendant.

302.

2. The copartnership between A and B was dissolved by mutual consent. At the time of the dissolution, the firm was indebted to X in the sum of \$1,000. X thereafter executed a release of the indebtedness to A, which release exonerated him from all liability incurred by reason of his connection with the partnership. Then X sued B for the full amount of the claim. Has B, by reason of the above facts, any defense to the cause of action or any part thereof? Give your reasons.

303.

3. A and B are each merchants doing a separate business in the city of New York. They dealt with each other between January 1, 1895, and January 1, 1899. Each kept an account of his transactions with the other, which accounts were mutual, open and current. On January 1, 1899, the date of the last item in A's account, there was a balance due on the account from B to A of \$1,000. A began an action therefor on January 1, 1904. B pleads the statute of limitations as a defense to all items prior to January 1, 1898, which, if allowed, will reduce A's claim to \$40. Is B's plea good or otherwise? Give your reasons.

304.

4. You procure, as attorney for the plaintiff, an order directing the service of a summons upon a non-resident defendant without the State, by publication in two newspapers for not less than once a week for six successive weeks, or, at the option of the plaintiff, by service of the summons and a copy of the complaint and order without the State, upon the defendant personally.

You exercise the last option. When will the defendant so served be in default for failure to appear or answer?

305.

5. The complaint in an action by a corporation alleges "that the plaintiff is a domestic corporation duly organized and existing under and by virtue of the laws of the State of New York." You appear for the defendant and wish to put in issue the existence of the corporation. Draw the clause in your answer necessary to do so. Omit verification.

306.

6. A conductor finds a sum of money in a railroad car and turns it over to the company. Each of two persons make a separate demand on the company for the same and one brings action. The company is in doubt as to whom it belongs.

What course would you advise the company to take?

307.

7. Your client is a tenant in possession of a dwelling-house under a lease having three years to run. The house takes fire and is injured thereby. The tenant consults you as to his right to surrender the premises because of said fire and his liability to pay to the owner rent for the time subsequent to the surrender.

State the rule.

308.

8. A, the owner of certain premises in the city of New York, leased them to B for the term of five years from May 1, 1898, at the annual rent of \$5,000 a year payable quarterly. The lease was in writing and B went into posses-

sion. On June 2, 1899, B wrote a letter to A stating his intention to abandon the premises at once and to no longer pay rent therefor; he left the same day. To this letter A made no reply. Thereafter A, acting in good faith, and with a desire to diminish his claim against B, let and rented the premises to C for the balance of the term at the annual rental of \$4,000, which was the best figure he could procure therefor. A now seeks to hold B for the difference in the rent. B consults you. What do you say as to his liability? Give your reasons.

309.

9. A, as landlord, executed and delivered to B, as tenant, a written lease of a certain factory in the city of X for a term of years beginning May 1, 1904, at an annual rental of \$1,000. On May 1, 1904, B found X, a former tenant of A, in possession of the demised premises, who wrongfully withheld the same from both A and B. B was compelled to have a factory for use at once, and he thereupon notified the landlord that as he had not given him possession of the factory on May 1, 1904, he elected to terminate the lease, and he hired and entered into possession of another factory. The landlord refused to accept the surrender and proposes to hold B for the rent reserved in the lease.

B consults you. What do you say as to his liability? Give your reasons.

310.

10. A owned a horse, for which B offered him \$500. A at once accepted the offer and it was agreed that the horse should be delivered and paid for on the following day. Nothing further transpired until the next day, when B tendered the agreed price, demanded the horse, and A refused to perform the contract. The value of the horse was \$1,000. On the trial of an action brought by B against A for breach of his contract all these facts, including value, were admitted. Who should have judgment, and why?

311.

11. Where a valid contract was made for the sale and delivery of specific articles of personal property under which

the title did not vest in the vendee, and the property was destroyed by accident, without fault of the vendor, so that delivery by him became impossible, is the vendor liable to the vendee in damages for non-delivery? Give the reason for your answer.

312.

12. A loaned to the firm of C and D \$5,000, to be used in its business for one year, under an agreement that he was to receive one-third of the profits, and if at the end of the year he did not conclude to become a partner, he was to be repaid out of the copartnership funds. During that time L sold and delivered to the firm goods which were used in its business, of the value of \$1,000. They were not paid for, and L brought an action to recover therefor and made A a party defendant with C and D. A alone defended. At the trial there was no dispute as to the facts, and the only question of law presented was whether A was liable to the plaintiff as a member of such firm. What should have been the decision, and upon what ground?

313.

13. A and B were copartners engaged in dealing and speculating in real estate. They owned certain land which they sold to one D, the contract by D being induced by the fraud and false representations of A, which were material, and upon which D relied in making the purchase. When D learned of the fraud he brought an action in fraud to recover the price paid for the land, and made both A and B parties defendants. On the trial the court was requested by B to instruct the jury that he was not liable unless he was personally guilty of the fraud charged. The court denied this request, and B excepted. Was the exception well taken? Give your reasons for the answer.

314.

14. Two valid bonds, negotiable by indorsement only, were duly made and issued by the county of S. They were payable to R and delivered to him. R, for a valuable consideration and before maturity, by indorsement in blank,

duly transferred and delivered them to C. While in the hands of C, thus indorsed, they were stolen. Subsequently they were offered for sale to A, who became a purchaser for a valuable consideration and before maturity. At that time R's indorsement upon the bonds had been erased, but of that A had no knowledge. The person offering them, however, falsely personated R and indorsed R's name on the bonds and delivered them to A. Afterwards C sued A for the bonds. For whom should judgment be given, and why?

315.

15. A presented to B for his signature a paper which he represented to be a duplicate of an order for certain personal property, which B had already made, and B, without reading or examining the paper presented, signed and delivered it to A. It was in fact not an order but a negotiable promissory note, payable thirty days after date. Before it became due C purchased it in good faith and paid a valuable consideration therefor. When it became due it was not paid, and thereupon C brought an action on the note against B.

These facts being conceded, who should have judgment? Give your reasons.

316.

16. A loaned to B \$1,000, for which B gave his promissory note payable to A's order one year from date, at the office of W. A being subsequently informed by one M, her son-in-law, that B wished to pay the interest and renew the note for one year, gave the note to M, without indorsement, and with instructions to receive the interest and take a new note indorsed by C for the payment for the principal. Before the maturity of the note, however, B left the money to pay it with W at the specified place of payment. When the note became due M presented it at that place with a forged order directing its payment to him. Upon receiving the note and order W, in the presence of B, paid the money to M, who paid the interest to A and absconded with the principal. A sued B for the principal and the foregoing facts were undisputed. Who should recover, and why?

317.

17. A delivered a certificate of stock to B as collateral security for a loan of \$1,000 by B to A. While B thus held the certificate he applied to a bank for a loan upon it of \$2,000, in effect stating that he wanted it for A. The bank agreed to make the loan if B would procure from A a proper power of attorney to be attached to the certificate. B did not procure the \$2,000 loan for A, but for himself, and he procured the power of attorney by representing to A that he, B, ought to have it to secure his loan of \$1,000. B then delivered the certificate and power of attorney to the bank and obtained the loan of \$2,000. Subsequently the bank, as alleged pledgee, brought an action to foreclose a claimed lien on the stock for \$2,000, making A a party to the action. A defended on the ground that B had no authority to pledge the stock, and that as B did not claim to the bank to be the owner of it, the bank obtained no title or interest therein, which would enable it to maintain the action. Who should have judgment, and why?

318.

18. A and B were copartners engaged in a mercantile business under the firm name of A and B. C was surety to the firm for the payment of its purchases. B died, but the business was continued under the said firm name by A and the administrator of B's estate, who contracted debts for purchases to the amount of \$5,000, and then became insolvent. The creditors claim that C is liable, as surety, for the amount. He claims otherwise. What do you say? Give your reasons.

319.

19. A gave his promissory note, with B, C and D as sureties. Thereafter A became insolvent. B paid the note when it became due. Subsequently C became insolvent. B now consults you as to his rights, if any, against D under the circumstances. State fully, with your reasons.

320.

20. A entered into an agreement in writing with B to sell and convey to B thirty days after the date of the agreement,

a house for the sum of \$15,000, which B agreed to pay upon delivery of the deed. B at once, and before the payment of any part of the purchase money or the delivery of the deed to him, took out a policy of fire insurance in the Z. Fire Insurance Company upon the house for his own benefit. The next day the house burned. The insurance company refused to pay the loss, claiming that B had no insurable interest. B brings an action upon the policy. Can he recover? If so, why? If not, why not?

321.

21. A, who had no property, was indebted to B in the sum of \$2,000. B procured an insurance on the life of A, payable, in event of death, to himself, B. The policy provided that it should be null and void in case the insured should "die by his own hand or act voluntary or otherwise." A, the insured, became sick, and accidentally, and with no intent to cause death and being perfectly sane, took an overdose of medicine prescribed by his physician, from the effects of which he died. The company questions its liability upon the policy. What do you say, and for what reason?

322.

22. A guest at a country inn, having valuable jewels, placed the same in the innkeeper's safe in compliance with a printed notice posted in the guest's room. The safe was opened by burglars without negligence on the part of the innkeeper or the guest and the jewels were stolen. The guest brings an action against the innkeeper for the value of the jewels. Can he recover? Answer fully, with your reasons.

323.

23. The X. & Y. Railroad Company received for transportation to Buffalo a carload of valuable horses. After arrival at destination and before the horses could be taken from the custody of the railroad company, a great fire broke out in the city, and without any fault on the part of the railroad company extended to the car containing the horses, and they

were burned to death. Is the railroad company liable for the value of the horses? If so, why? If not, why not? Answer fully.

324.

24. A sold by sample 1,000 bushels of wheat to B and a like amount to C to be delivered at A's warehouse. B paid in full for the amount of his purchase, but C paid nothing. A measured out the respective amounts of wheat which awaited B's and C's orders and immediately thereafter the warehouse and its contents, including both parcels of wheat, were destroyed by fire. A sues C for the price of the wheat sold to him, and B sues A for the value of the wheat purchased by him. What are the rights and liabilities of A, B and C, respectively? Answer fully, with your reasons.

325.

25. A entered into a contract with B to manufacture and deliver to B a boiler and engine which was expressly warranted should be of sufficient capacity and power for a mill owned by B. Upon delivery of the boiler and engine B at once saw that they were incapable of doing the work required of them, but without notice of defect to A B set them up and brought suit against A to recover the damages sustained by him because they did not comply with the contract. Was he entitled to recover? If so, why? If not, why not?

EXAMINATION PAPER.

No. 7.

AFTERNOON — FOUR HOURS.

326.

1. On the trial of an action, the plaintiff called a witness on his behalf, and interrogated him to establish a material fact. The witness answered opposite to what he told plaintiff's attorney the fact to be. Thereupon plaintiff called a witness to prove that the particular fact his former witness testified to was otherwise, and objection was made to the competency of his testimony.

What should the ruling of the court be, and why?

327.

2. You desire to examine on the trial of an action the president and books of account of the defendant corporation. How would you proceed?

328.

3. A and B entered into an agreement, which was reduced to writing. In an action between X and B, the agreement became relevant to the issue and X offered parol testimony contradicting the same, and to show what the real transaction was. Objection was made thereto.

What should be the ruling of the court, and why?

329.

4. A brought an action against X to rescind a contract to purchase shares of stock and to recover the purchase price thereof, on the ground that he had been induced to enter

into the same because of false and fraudulent representations in relation thereto, made to him by the defendant and on which he relied.

On the trial, plaintiff offered testimony of other similar representations made about the same time to other purchasers of the stock by the defendant. Objection was made thereto.

What should be the ruling of the court, and why?

330.

5. On the trial of an action, the defendant called X as a witness. On his cross-examination, plaintiff's attorney asked him the following question: "Is it not a fact that you were convicted of the crime of burglary at the Erie Trial Term in January, 1905?" Objection was made thereto.

What should be the ruling of the court, and why?

331.

6. A and B met by accident and agreed that at a certain hour on the night of the following day they would burglarize the residence of C, and arranged the part each should take therein and separated. For some reason the matter was dropped, and nothing further was done or said about committing the crime. Were they guilty of a crime or not? If so, what? If not, why not?

332.

7. Upon the trial of a criminal action for felony the jury found the defendant guilty. He appeared for judgment and waived the appointment of a time for pronouncing the same. The court thereupon, without asking him any further questions, sentenced him to State prison for a lawful period of time. Was the judgment and sentence of the court valid or not? If so, why so? If not, why not?

333.

8. On the trial of X under an indictment for murder in the first degree, it was established that the prisoner committed the act while in a state of voluntary intoxication.

The prisoner's counsel asked the court to charge the jury that the defendant's intoxication at the time might be considered by them in determining the intent with which the act was committed, and the grade or degree of his crime.

The court refused so to charge, and the defendant was convicted of murder in the first degree. Was the refusal to charge erroneous or otherwise? Give your reasons.

334.

9. A agreed to purchase of B two hundred hogs and pay him the market price therefor, if delivered within four weeks, and A had not been previously supplied within that time. B drove his hogs to the place of delivery and offered them to A, who, although the contract was void under the statute of frauds, would have taken and paid for them but for the fact that one C, who had learned of the contract between A and B, induced A to purchase his hogs by falsely and fraudulently representing to A that B had taken his hogs to another market and did not intend to fulfill his contract. This statement was false and known by C to be so, and was intended to and did deprive B of the benefit of his contract. Upon learning these facts B sued C for fraud and proved damages to the extent of \$400. These facts being undenied, for whom should judgment be given? Give reasons.

335.

10. M owned and possessed a right of way over the farm of B, subject to the duty of maintaining gates across the way, at each end thereof. M removed the gates. Afterwards, while M was engaged in making necessary repairs to the way, B, claiming that M had lost his right of way and was therefore a trespasser, assaulted and beat M in an effort to eject him from the farm as such trespasser. An action therefor was brought by M against B. The latter alleged as a defense that by the removal of the gates M had broken the condition upon which his right depended, and that he thereby lost his right to the use of the way, and hence the action of B was justified in removing M as a trespasser

upon his premises. Conceding these facts and that M sustained damage, for whom should judgment be given, and why?

336.

11. A purchased a ticket for a passage upon the railroad of the X. Railroad Company, entered one of its cars and before reaching his destination lost his ticket. When he attempted to pass through the gate across the passageway from the station, he was stopped by the gatekeeper of the company and informed that he could not pass until he paid his fare or purchased a ticket. He stated to the gatekeeper that he had purchased a ticket and its loss. When he persisted in attempting to pass he was pushed back by the gatekeeper, who then ordered his arrest. He was arrested and taken to the police station and locked up over night. In the morning he was examined and discharged. The company had ordered its gatekeeper not to let passengers pass from the station until they had paid their fare or showed a ticket. A sued the company for false imprisonment. Was it liable? If not, why not? Give your reasons.

337.

12. A died owing a valuable parcel of real estate. He also left a last will and testament by which he devised it to his executors in trust for the benefit of the X corporation, and expressly declared by his will that no portion of his real estate should go to his heirs-at-law. The devise for the benefit of the corporation proved to be invalid, and his heirs-at-law then brought an action against the executors, who were in possession, to recover the real property of which A died seized. What should be the decision? Give your reasons.

338.

13. In an action under the Code to establish the will of D, it appeared on the trial that the testator, instead of signing the will at the end and immediately after the testimonium clause, signed it after the attestation clause, where the subscribing witnesses also signed.

Was the will executed by the testator as required by statute? Give the reasons for your answer.

339.

14. D died leaving a last will and testament, whereby he devised to A, his widow, all of his real estate for the term of her natural life. The testator's will then provided that "from and after his widow's death" his real estate should go to his heirs-at-law. At his death the testator left him surviving A, his widow, and C, a daughter, who was his only heir at law.

What estate did C take under her father's will in the real property left by him? Was it a vested remainder, the enjoyment of which was postponed during the life of the widow, or was it a contingent remainder which was dependent upon C's surviving the testator's widow? Give your reasons.

340.

15. A, being the owner of a farm of 100 acres, sold it to B for \$5,000 and gave him a deed thereof. Upon the delivery of the deed B paid \$2,000 in cash and gave his promissory note for the remaining \$3,000, payable to the order of A. Thereupon B entered into and still holds the possession of the farm. Subsequently, and before the note became due, B became insolvent and the note was consequently uncollectible. A, thinking he ought in some way be able to hold the farm for the payment of the unpaid purchase price, consults you. Has he any remedy except upon the note, and if so, what?

341.

16. A owned several vacant lots upon which he intended in the following spring to commence the erection of a business block. In the previous fall he gave B a license to occupy them for storing stone until spring, when the stone were to be removed by B, who paid nothing for the use of the lots. In the spring A ordered B to remove the stone, which he neglected to do. Thereupon A commenced a suit in equity against B to compel their removal. B defended

on the ground that the suit could not be maintained because A had an adequate remedy at law, and this was pleaded as a defense. After issue was thus joined you were consulted by A as to the validity of that defense. What would be your advice? Give reasons.

342.

17. A was the owner of a vacant city lot. B had \$5,000 upon which he was receiving only three per cent interest. B proposed to A to use his money in building a block of buildings upon A's lot, to the end that A would receive something for the use of the lot and that B would receive more than three per cent for the use of his money. A assented to B's proposition and agreed that if B built the block he should have a right to sell it, and should then pay A the value of the lot. This agreement was not in writing, but B relied upon and in pursuance of it erected a block upon A's lot. After the block was completed A at once denied that B had any right to or interest in the property, whereupon B brought a suit in equity to establish and enforce his rights, if he had any.

Could B maintain the suit and to what relief, if any, was he entitled?

343.

18. The X. Company, a stock corporation, was duly formed under the laws of the State of New York. After the certificate of incorporation had been filed in accordance with law the incorporators of the company determined that it failed to express the true object and purpose of the corporation, and that the same should be changed so as to truly set forth such object and purpose. How did they accomplish the result desired? Answer fully.

344.

19. A is the owner of 51 per cent of the capital stock of the X. & Y. Ry. Co. The stockholders of the company are to decide whether the company shall purchase a number of locomotives which are necessary for the business of the company, and a meeting of stockholders is held for the pur-

pose of voting upon the purchase. A moves that ten locomotives be purchased from himself, he being a locomotive manufacturer, for \$125,000, the locomotives having cost him \$100,000, which fact he discloses to the other stockholders. His motion is carried by his vote upon 51 per cent of the shares of the capital stock, against the vote in opposition of stockholders owning 49 per cent of the capital stock. A minority stockholder brings suit to restrain the purchase upon the facts stated, no fraud being alleged. Will the action lie? If so, why? If not, why not? Answer fully.

345.

20. The "A. Company," a domestic corporation, made its promissory note for \$10,000 payable three months after date to the order of X, and agreed to pay interest thereon at the rate of 10 per cent. The note was duly authorized by the directors, executed by the proper officers and the proceeds thereof were applied to the corporate uses of the corporation. The note was not paid at maturity, and X brought an action thereon against the corporation. Upon the facts stated had the company a defense to the note? If so, what defense? If no defense, why?

346.

21. The guardian of a minor suffered waste of the inheritance of his ward to the amount of \$5,000. You are asked what relief or remedy, if any, may be enforced on behalf of the ward. What do you say?

347.

22. A and B own a parcel of real estate as tenants in common. A had divorced his wife for adultery and B's wife had divorced him for the same cause. They are about to transfer the title to the property to your client and offer a deed of the same not signed by either of the former wives. Questions arises as to the sufficiency of the deed. What do you say, and why?

348.

23. X and Y were duly married, X, the husband, absented himself for six successive years without being known to Y, the wife, to be living during that time. Y thereupon married Z. X returns and claims the right to resume marital relations with Y, to which Z objects. What are the rights and obligations of the respective parties? Answer fully, with your reasons.

349.

24. A was killed in a railroad accident and his administrator commenced an action against the railroad company to recover \$20,000 damages therefor. After the commencement of the action the Legislature passed an act limiting to \$10,000 the amount recoverable in an action to recover damages for injuries resulting in death. The jury rendered a verdict in favor of the plaintiff for \$15,000, upon which judgment was entered for that amount. A question arises as to the validity of the judgment. Is it valid? If so, why? If not, why not?

350.

25. A was arrested on a warrant charging him with murder, and, on being taken before the magistrate issuing the warrant, demanded an examination. On such examination, A appearing with counsel, B was sworn as a witness on behalf of the people, and his testimony reduced to writing by the magistrate. Opportunity was given to A and his counsel to cross-examine the witness, which was declined. The evidence given by B was read over to and signed by him and properly certified by the magistrate. A was held for the grand jury and subsequently indicted on the charge. On the trial of the indictment, B having died, the district attorney offered in evidence the deposition of B taken before the magistrate. The prisoner's counsel objected as in violation of his client's constitutional rights. Was the objection sustained or not? State your reasons. What constitutional right is involved?

EXAMINATION PAPER.

No. 8.

FORENOON — FOUR HOURS.

351.

1. Draw an affidavit of personal service of a summons in the Supreme Court upon an infant defendant under the age of fourteen years.

352.

2. A was the sole administrator of B, who died leaving him surviving a wife and next-of-kin. B's death was caused by the wrongful act of C. Subsequently C died, and D was duly appointed as his executor. Thereupon A, as administrator of B, brought an action against D, as executor of the estate of C, to recover damages for such wrongful act of his testator. These facts were fully alleged in the complaint, and the defendant duly demurred thereto. What should be the decision, and why?

353.

3. A sued B, alleging an account stated. B interposed a general denial, and offered to prove that the dealings constituting the account mentioned were between B and C, and that the indebtedness of B thereon was to C, and not to A. A objected to that evidence upon the sole ground that it was not admissible under the pleadings. What should be the ruling, and why?

354.

4. A owned a farm upon which he gave B a mortgage to secure a usurious loan of \$5,000. A devised the farm to C, and then died. After A's death C brought a suit in equity

against B praying for a judgment that said mortgage be declared void for usury, and be set aside and canceled. B demurred to the complaint on the ground that it did not state facts sufficient to constitute a cause of action, in that it failed to allege that C had paid, or offered to pay, the sum actually loaned to A. What should the decision be?

355.

5. A, an infant without having a guardian *ad litem* appointed, commenced an action against the R. Co. Issue was joined and the case came on for trial. At the close of the evidence the defendant moved for a non-suit on the ground that the plaintiff was prosecuting the action without the appointment of a guardian. An application was then made by the plaintiff for the appointment of a guardian *ad litem nunc pro tunc*. Had the court jurisdiction to grant the plaintiff's application, or was it required to grant the defendant's motion for a non-suit? Give the reasons for your answer.

356.

6. In an action in which you are the defendant's attorney it is necessary to make and serve an affidavit of merits, to be verified by the defendant. Draw such an affidavit stating fully the facts required to be alleged therein.

357.

7. A owned a farm which B agreed to purchase and for which he agreed to pay A \$5,000. The contract between them was in writing, but contained no agreement warranting the title. The farm was subject to a mortgage for \$4,000, which had been recorded, but its existence was unknown to B as matter of fact when the contract was made. Subsequently B learned of it and that the farm had been sold on its foreclosure. He then refused to perform the contract. A, however, insisted that, as the contract contained no express warranty of the title, B was bound to pay the agreed consideration, and brought an action against B therefor. In the absence of an express warranty could A recover? Give the reasons for your answer.

358.

8. A gave B a mortgage upon certain real estate nominally to secure the payment of \$20,000 on demand. In fact, it was to secure advances thereafter to be made by B, under a contract by A to erect three houses upon the mortgaged premises, the advances to be made as the buildings progressed, the houses to be completed within one year. If the work proceeded according to the contract, no demand was to be made for the mortgage debt until ninety days after A was entitled to his last advance. B advanced \$10,000 under the contract when A abandoned it, leaving the houses unfinished, and made a general assignment to C for the benefit of creditors. B thereupon commenced an action to foreclose his mortgage without demand and without waiting for the expiration of the time set for the completion of the buildings. C, as such assignee, defended upon the ground that a demand before action was necessary, and that the action was prematurely brought. Was the judgment for B, or was it against him, and why?

359.

9. H was the owner in fee of certain city lots situated upon D street, which was closed in 1900, in pursuance of a statute passed in 1899. In 1902 H sold and deeded the lots to B by a deed containing the usual covenants of warranty, and which bounded the lots in front by the side of D street. The award of damages to the lots caused by closing the street was made in 1904. H claimed the amount of the award, and it was also claimed by B. For whom was judgment given, and why?

360.

10. The X Bank held A's note for \$500; A was away at the time of its maturity, having made no provision for its payment. B, who took a friendly interest in the affairs of A, to prevent A's credit being impaired, without the request of A, paid the note when due, and thereupon the bank canceled it. B honestly expected, when he made the payment, because of his friendly relations with A, that A would reimburse him therefor. Upon A's return B informed him of his payment of the note and his reasons therefor, for which A

expressed his gratitude. A few weeks later, A having said nothing about reimbursement, B requested it, which A refused, whereupon B brings an action to recover from A the amount so paid for his benefit. A defends. Who wins, and why?

361.

11. The plaintiff was employed by the defendant "at the rate of \$1,000 per year," nothing more being said. At the end of the first month the plaintiff left defendant's employ without cause and demanded pay for the month's service rendered, which defendant refused. Thereupon plaintiff sued defendant for the month's wages under the contract. The defendant in his answer set up the contract, alleged the plaintiff's breach thereof and his own readiness to perform, and demanded a dismissal of the complaint. The above facts being established upon the trial, judgment for whom, and why?

362.

12. A and B were rivals in the mercantile business. A had in merchandise and accounts \$100,000, while B had \$50,000. They signed a limited partnership agreement under the statute, which was filed, recorded and published according to the facts, in which A was made the general partner and B the special, or limited, partner, with a capital of \$150,000, of which A contributed his said merchandise and accounts at \$100,000, and B his said merchandise and accounts at \$50,000. The new firm thereafter failed, with liabilities amounting to \$150,000. What is the liability of A and B, respectively, for the debts of the concern? State your reasons.

363.

13. A, B and C were copartners. X commenced an action against the firm, on a firm obligation, by the service of a summons and complaint on A only. A defaulted and X thereupon entered judgment against A, B and C and issued execution to the sheriff of the county where the firm did business and where A, B and C lived. The sheriff has levied on the entire stock of the firm which is concededly insuffi-

cient to satisfy the judgment, and has advertised it and C's private dwelling-house for sale under the execution. C consults you as to his rights, if any, in the premises. What do you say, and why?

364.

14. A made his promissory note payable to the order of X, an infant. X, for value, and before maturity indorsed the same over to B. The note was protested for nonpayment and due notice given, etc. B sued A thereon, who defends on the ground that X was an infant, and that by reason thereof his indorsement did not pass title or the property in the note to B. B demurs to the answer. Judgment for whom, and why?

365.

15. A made his note payable to the order of B, who duly indorsed it over to C, who duly indorsed it over to D, who indorsed it over to E, who duly indorsed it back to C, all in due course. The note is dishonored, duly protested, etc., notice being given to all indorsers. C sues A, B, D and E on the note. The defendants all consult you as to their respective liabilities. What do you advise, and why?

366.

16. A was a general agent for B in buying and selling horses, who was instructed by B never to warrant any horse he sold for him, but that the buyer must purchase at his own risk. Notwithstanding and contrary to such instructions, in selling a span of horses to C A warranted them kind and sound in every particular. C was ignorant of B's instructions to A. The horses proved to be both unkind and unsound, to the great damage of C, who sued B for such damage, relying upon the said warranty. Judgment for whom, and why?

367.

17. A commercial agent, X, sold by sample to B 1,000 bushels of malt and forwarded the order to his house to be filled. The house promptly accepted the order and delivered the malt, to be paid for at thirty days. The house had had

no previous dealing with B. Upon the expiration of the time X called upon B and collected from him payment for the malt, stating that, although an agent simply, he was authorized to collect, when, in fact, he was especially instructed by his house not to collect. The agent absconded with the money. Upon whom does the loss fall? State your reasons.

368.

18. A was surety for B, the maker of a promissory note. After its maturity the holder of the note said to B: "I'll not bother you on that note, nor sue you thereon for ninety days, in view of your present poverty." The holder knew at the time that A was surety on the note, yet neither he nor B informed him of the transaction, and he knew nothing of it until after the ninety days agreed upon had expired. By reason of the above transaction A claims to be released as surety. What do you say, and why?

369.

19. A was surety to C for B. C had received collateral security from B for the same debt, which fact was unknown to A. When the debt became due A paid it and thereupon C returned the collateral to B, who disposed of it and then became insolvent. A now learns of the above facts and asks you if he has any remedy in the premises. What do you say?

370.

20. A policy of fire insurance provided that the entire policy should be void if the insured dwelling-house, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days. The house in question was a dwelling-house on a farm. It was occupied as a summer residence by the owner, who, when he moved into the city in the fall, left all his furniture in it and put the same in charge of his farmer, who resided in another house on the farm, as caretaker. The farmer had a key to the house and went into and inspected the same regu-

larly and at least once a week. The owner visited it regularly every two weeks and made a thorough inspection thereof, and on those occasions lunched therein. No person slept in it. After the premises had been in the above condition for about two months it was destroyed by fire. The company now refuses to pay the loss, claiming a breach of the above condition. Is the company liable? If so, why so; if not, why not?

371.

21. A policy of life insurance contained a clause that if the proposals, answers and declarations made by the insured, and on which the policy was issued, should be found in any respect false or fraudulent, then the policy should be void. In his application for the policy the insured warranted his age to be thirty years, when, as matter of fact, he knew he was thirty-five years old. The agent who took the policy on behalf of the company knew that the insured was thirty-five years of age and the falsity of the warranty. The insured having died, the company contests the policy. On the above facts judgment for whom, and why?

372.

22. X consigned to A, an auctioneer in the city of New York, for sale on his account certain merchandise, his property, of the value of \$10,000. While in the auctioneer's possession the property was levied upon by the sheriff of New York county under an execution in an action in which one Z was the sole defendant, and was advertised and sold by the sheriff under a claim that the merchandise was the property of Z, the judgment debtor, and not the property of X, of all of which X had no notice, nor did A take any steps to prevent the sale. X, when he learned what had taken place, demanded of A, the auctioneer, the return of the property or its value, both of which demands the auctioneer refused to comply with, justifying his refusal upon the above facts. X now sues the auctioneer for the value of the consignment. The above facts appearing, judgment for whom, and why?

373.

23. A delivered to B a quantity of cloth and other necessary material from which B agreed to make and deliver to A, 10,000 pairs of trousers, at \$1.50 per pair. When B made up 5,000 pairs of the trousers his factory, accidentally and without his fault or negligence, took fire, in which fire all the made-up trousers and the remaining stock of goods were totally destroyed. A thereupon sued B for his damage caused by B's inability to perform his contract, and B counterclaimed for \$7,500, the value of the labor he had expended in completing the 5,000 pairs of trousers not delivered. Judgment for whom, and why?

374.

24. On May 1, 1905, A and B entered into a valid contract in and by which A agreed to sell and deliver to B on June 1, 1905, 1,000 barrels of flour, which B agreed to accept and to pay A five dollars per barrel on delivery. On May 15, 1905, B notified A of his intention not to accept delivery of the flour, nor to pay for the same on June first. Thereupon and without tendering the flour A sent the same to public auction and after due advertisement and notice to B sold the same on May 19 to the highest bidder for \$4 a barrel. On May 20 A began suit against B to recover the deficiency on the sale. Can A maintain his action? Give your reasons.

375.

25. A wrote to B saying, "Send me, by American Express, at once 5,000 X brand cigars on a credit of six months." B immediately expressed to A by American Express, as requested, 4,000 X brand cigars and billed them on a credit of five months, stating that the remaining 1,000 cigars would follow in a couple of weeks, or, as soon as he could manufacture the same. The 4,000 cigars shipped were lost in transit, and B sues A for their value, claiming that he delivered them to A's agent, the express company, at his request, and that as between them A must stand the loss. A defends. Judgment for whom, and why?

EXAMINATION PAPER.

No. 8.

AFTERNOON — FOUR HOURS.

376.

1. A sued B to recover damages for an assault with a loaded gun. On the trial, the court having already charged the jury that the burden was upon the plaintiff to prove his case by a preponderance of evidence, B requested the court to further charge that he was presumed to be innocent until he was proved to be guilty. This the court declined to charge and B duly excepted. Was the exception well taken? Give the reasons for your answer.

377.

2. A gave to B his promissory note for \$2,000, in which it was stated to be for money loaned. When it became due B sued A thereon, who defended on the ground of want of consideration. On the trial B offered to prove that the note was given for the board, care and nursing of A furnished to and performed for him by B. This evidence was objected to by A on the ground that it contradicted the note, which was in writing, and hence was inadmissible. What should the ruling be?

378.

3. A, as administrator of B, brought an action against the X. Co. to recover for its alleged negligence causing the death of B. No one witnessed the occurrence, which resulted in B's injury and subsequent death. About thirty minutes after the accident the decedent told a witness how it occurred. On the trial the plaintiff called this witness and

offered to prove by him the declarations of the decedent as to how the injury happened. The evidence was objected to by the defendant upon the ground that the declarations of the decedent were incompetent, were no part of the *res gestæ*, and that such declarations were subsequent to the injury and at a different place. What should the ruling be?

379.

4. A, an heir-at-law of D, brought an action against B, the grantee of D, deceased, to set aside a conveyance of land made by the decedent to B on the ground that it was obtained by undue influence. On the trial E, the decedent's widow, who, as his wife, joined in the conveyance by D to B, was called as a witness for A and interrogated as to a personal transaction between herself and her deceased husband relating to such property and the transfer thereof. This evidence was objected to as inadmissible, and that the witness was incompetent under section 829 of the Code, on the ground that she was interested in the event of the action. These objections were overruled, and the defendant excepted. Was the exception well taken?

380.

5. A gave B his promissory note for \$1,000 loaned to him by B. It was payable, with interest, thirty days after date. Ten years afterwards B died and C was appointed as his administrator. Thereupon C, as such administrator, sued A upon the note, and A pleaded the statute of limitations as a defense. On the trial the note was produced in evidence, with indorsements of part payments thereon, which were in the handwriting of B. They were all dated more than seven years after the note was given. No other proof was offered. For whom should the court direct judgment, and why?

381.

6. A was duly indicted for grand larceny and brought to trial thereon. The trial commenced on Monday, continued through the day when the court and the trial were adjourned

until Tuesday. On Tuesday the court did not convene, because of the inability of the judge to reach the court, owing to the prevalence of a blizzard, but it reconvened on Wednesday and proceeded with the trial without objection from the defendant. The trial resulted in a verdict convicting A of the crime charged. When sentence was moved A moved for a new trial and arrest of judgment on the ground that the court was not in session when the verdict was rendered; that not having reconvened on Tuesday it was dissolved and its subsequent proceedings were without jurisdiction. What was the decision, and why?

382.

7. A was charged in an indictment with having committed a specific crime constituting a felony. On the trial of the indictment the proof disclosed that A was absent at the time the crime was committed, although he advised and procured its commission. A objected to the submission of the case to the jury on the ground that the proof showed that he was absent at the time of the alleged commission of the crime, and hence there was no sufficient allegation in the indictment of the facts constituting the crime proved. Was the indictment sufficient? Give the reasons for your answer.

383.

8. P was indicted for the murder of B. On the trial of P it was proved that a dead body was found, alleged to be that of B. There was no direct proof of that fact, but there was evidence of circumstances which were sufficient to justify a jury in finding, beyond a reasonable doubt, that the body found was that of B. Could that fact be established by the circumstantial proof under section 181 of the Penal Code, which reads: "No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of killing by the defendant as alleged, are each established as independent facts, the former by direct proof, and the latter beyond a reasonable doubt." Give your reasons.

384.

9. While A was an ordinary passenger on the X. Railroad the train suddenly left the track and he was badly injured. On the trial, in an action brought for damages, A proved the foregoing facts and rested. The X. Company moved for a nonsuit on the ground that plaintiff had shown no negligence against the company. How was the motion decided? State your reasons.

385.

10. A and B were walking together and they casually met C, a practicing physician, to whom B bowed. A thereupon said to B: "I do not recognize C now; he is a liar and dishonest." Nothing more was said. B reported the conversation to C, who sued A for slander. On the trial C proved the above facts and rested. A thereupon moved for judgment. Judgment for whom and why?

386.

11. A and B owned adjoining vacant lots on a side hill in the city of X. The lot owned by A was above that of B, and the surface water, which came in the time of rain, flowed naturally from A's lot down to and over and across B's lot which was below. B built upon his lot a house, which caught and dammed the water which theretofore flowed naturally down the hill and threw it back upon A's lot to his damage. A sues B therefor. Can he recover? Give your reasons.

387.

12. A had two children, B and C, and thereafter duly adopted as a child, D, a minor. Subsequently the father, A, made his will, leaving all his property to "the heirs of A, share and share alike." The father died and his said will was duly probated. B, C and D consult you as to their respective rights and interests under the will. What do you advise, and why?

388.

13. A, by his will, devised and bequeathed a house and lot and \$10,000 in cash to his son, B, and then gave all his

residuary estate, real and personal, to C. The legacy and bequest to B lapsed by reason of his death occurring in the lifetime of A. After A's death and the probate of his said will C claimed the house and lot and the \$10,000 as residuary legatee. A's executors also make claim to the \$10,000 in the interest of the next-of-kin of the testator. D, the only surviving child of A, for whom no provision was made in the will, claims the house and lot by descent. Who is entitled to the house and lot and the \$10,000? Give your reasons.

389.

14. A, who was but twenty years of age, made his last will and testament whereby he bequeathed all of his personal property, amounting to \$20,000, to B, one of his brothers, and devised his real estate, of the same value, to his other brother, C. A died without lawful descendants, leaving him surviving his widow, D, and his said two brothers. Both his father and mother are dead. What do you say as to the validity of the provisions of the will, and if the same is probated, how will the property be distributed and descend?

390.

15. A held a past-due mortgage on the farm of B, which B was unable to pay. B requested C, his wife, to furnish the money from her separate estate and take an assignment of the mortgage to herself, to which she consented, and gave the money therefor to her husband. B, the husband, instead of procuring an assignment, obtained from A a satisfaction of the mortgage, which he duly recorded, all without his wife's knowledge or consent. The wife, discovering the situation, consults you as to her rights. What do you advise, and what equitable principle is involved?

391.

16. A died leaving an estate of \$50,000, consisting entirely of cash. By his last will and testament he directed that \$10,000 thereof should be expended by his executors in the purchase of a farm for his son, B, to whom title in fee

should be given. Before such purchase could be made by the executors B died intestate, leaving a widow and one child him surviving. How shall the \$10,000 be distributed, and what equitable principle is involved?

392.

17. There was a past-due mortgage on the farm of A, held by B, duly recorded. A paid to B the amount of the mortgage, but instead of a satisfaction and discharge he obtained a written assignment of the mortgage from B, the name of the assignee being left blank, but did not record it. Subsequently A sold the farm to C subject to the mortgage, it being expressed in the deed that C assumed and agreed to pay said mortgage. One month after title passed to C A filled up the blank assignment by inserting the name of D as assignee, and sold and delivered it to D. D demanded payment of the mortgage, which C refused, he having first learned the facts after he took title, and D commenced foreclosure. C defended, claiming payment and satisfaction of the mortgage, and asked to have the same discharged of record. Judgment for whom, and what equitable principle is involved?

393.

18. The X corporation was capitalized for \$10,000, consisting of 2,000 shares of stock of the par value of five dollars a share. At the annual meeting of the stockholders, duly called for the purpose of electing directors, there were three tickets in the field. The A ticket received 250 votes, the B ticket 400 votes and the C ticket 200 votes. The inspectors of election certified the B ticket as elected, but the old board of directors refused to vacate or surrender their offices, claiming to hold over as directors, because a majority of the stock not having voted at the annual election, there was no valid election of their successors. What do you say? Give your reasons.

394.

19. A was a stockholder and director of the X. Stock Company. He was also a lawyer and was retained by the

board of directors to defend the corporation in several litigations pending against it, which he did, the reasonable worth and value of his services being \$1,000. There was no express resolution of the board passed containing an agreement to employ and compensate A for his services as attorney, nor was he entitled by the by-laws of the company to any salary for official services. Question arises whether, upon the above facts, A has a valid claim against the corporation. What do you say, and why?

395.

20. The board of directors of the X corporation consisted of five persons. At a regular meeting of the board, at which but three of the directors were present, by a vote of two directors in the affirmative and one in the negative, the president was directed to execute and deliver the promissory note of the corporation for a certain specified corporate purpose. Thereafter the dissenting director and the two absent directors signed a paper forbidding the issuing of the note, all of which is brought to the notice of your client, who is about to pay value for the note. He asks your advice as to whether the note is good or not under the circumstances disclosed. What would be your advice, and why?

396.

21. The income of an estate is devised to A until the birth of issue, upon the happening of which event, the income is to be divided between himself and the child. He has a child begotten and born out of wedlock. He thereafter marries the mother of the child, who seeks on its behalf to compel a division of the income as provided. What do you say as to the child's rights in the premises?

397.

22. A and B were husband and wife. They lived separate and apart by mutual agreement, the husband having the care and custody of X, an unmarried minor child, the sole issue of the marriage. The husband in and by his last will and tes-

tament, which was duly admitted to probate and recorded, appointed Y to be the general guardian of the person of the infant until it arrived at the age of twenty-one years. The widow consults you as to the validity of the appointment of the guardian. What do you say, and why?

398.

23. A sued B in contract to recover the price and value of certain goods, wares and merchandise sold and delivered to him by A. The complaint contained allegations of fraudulent misrepresentations on the part of the defendant as to his being of full age, and as to his responsibility, made to induce credit, that plaintiff sold on a credit and in reliance on such representations, as aforesaid, all of which were false. The defense was infancy. All of the above facts having been established on the trial of the action, both sides moved for judgment. Judgment for whom, and why?

399.

24. State the qualifications for voters for officers elective by the people.

400.

25. A was indicted and tried for robbery in the first degree. The jury acquitted him. Thereupon the district attorney, upon affidavits absolutely establishing misconduct and corruption on the part of the jury, moved to set aside the verdict and for a new trial. What should be the decision of the court on the motion, and for what reason?

EXAMINATION PAPER.

No. 9.

FORENOON — FOUR HOURS.

401

1. A did work and furnished materials to B to the full amount for which the City Court of the city of New York, or a County Court, can render judgment, which is due and wholly unpaid, and A wishes you to bring action in such one of those courts as you prefer to recover the full purchase price. Draw a complaint, without verification, in the action.

402

2. A sued B and in his complaint set out a cause of action in tort, viz.: the sale of a horse, the making of false and fraudulent representations on the sale, and the reliance of the plaintiff thereon and resulting damages. B's answer admitted the sale of the horse and denied all other allegations of the complaint, and then set up a counterclaim for balance of the purchase price of the horse, unpaid. Question arises as to defendant's right to plead, in the action, the counterclaim above set forth. What do you say and why?

403

3. B, a non-resident, was indebted to A, of the city of Syracuse, in the sum of \$2,000 past due. There were six carriages on the cars of the N. Y. C. & H. R. R. at Syracuse belonging to B, which had been consigned to a dealer by B to be sold on commission. A commences suit to recover his claim against B, attaching only three of the carriages, the other three being on another car in a distant part of the

freight yard, and so escaped the sheriff and his process. A served the summons on B by publication. B appeared and defended the action, and on the trial A was awarded judgment for the amount claimed, upon which he issued execution, and the sheriff levied upon and sold thereon all six of the carriages, leaving the execution partly unsatisfied. B having forbidden the sale of the three carriages not attached, now sues the sheriff for converting them. Judgment for whom, and why?

404

4. A, a lad of twenty years of age, was run down and severely injured by an automobile, which B was negligently driving. A comes to you and wishes you to bring an action in the Supreme Court against B to recover damages for his injuries. State fully and particularly what, if any, proceedings are necessary for you to take before issuing summons.

405

5. You were prosecuting an action as attorney for the plaintiff against B, the defendant. On the trial the case was submitted to the jury which, after a short deliberation, agreed upon a verdict, returned into court and duly reported its verdict in favor of your client against B in the sum of \$5,000, which was received by the court and at once recorded by the clerk. On hearing the verdict, B, who was afflicted with heart trouble, collapsed, and within five minutes after the recording of the verdict expired. Question now arises how, if at all, and against what name, person or persons, you can enter a judgment. What do you say? State the rule.

406

6. A, a resident of the State of Pennsylvania, was duly subpoenaed and in attendance as a witness on the trial of an action pending between E and F, then on trial at a trial term of the Supreme Court being held in the County of Broome, N. Y. While so in attendance A was served with a summons and complaint for the commencement of a civil action against him by G. Is such service valid? If not, why and what could A do to avoid it?

407

7. A and B were husband and wife. They had a child, issue of the marriage, which died. Subsequent to the death of the child the wife became seized in fee of real estate, and then died intestate, owning the real estate, leaving no descendants, father or mother, but leaving a brother and two children of a deceased sister, and her husband, her surviving. What becomes of the real estate?

408

8. A was the owner of a farm of 200 acres through which ran a public highway, east and west, included in the 200 acres, which highway divided the farm in two equal parts. A, by will, devised to his son B, "All of his farm lying south of the highway," and to his son C, "All of his farm lying north of the highway." A then made his son D his residuary legatee. A owned some personal, but no other real property, at the time of the devises. Question has arisen which of said legatees or devisees has title to the highway mentioned. What do you say? State your reasons.

409

9. A, the owner of certain real property, met B, a real estate agent, and said to him, "if you find a purchaser for my land at \$1,000 cash, sign a contract for the sale of the same and I will execute the necessary deed." B found a purchaser and signed for A a contract to convey the same, as above, to C, an intending purchaser.

C tendered the agreed purchase price, but A refused to execute and deliver the deed called for by the contract to convey and repudiated his transaction with B. Conceding that the above facts can be established, what are C's rights in the premises, if any, and why?

410

10. A and B contracted as follows: "In consideration of the purchase by B of a note for \$1,000, made by X payable in six months from this date, I, A, hereby guarantee the

collection of said note to B. Signed A." When the note became due X refused and neglected to pay the same, and B at once sued A on his guarantee as above. Question arises as to A's liability in the action. What do you say, and why?

411

11. By a valid contract A sold and agreed to deliver to B 1,000 barrels of flour, in lots of 100 barrels each, on the first day of each of the succeeding ten months, for which B agreed to pay A \$500 in cash for each installment as delivered. A delivered the first installment and was paid therefor. He refused, without cause, to deliver the second installment. B immediately brought an action against A to recover \$900 damages, which he claimed to have sustained because of the refusal and neglect of A to deliver 900 barrels of flour, the balance of the flour called for by the contract. Can the action be maintained? If so, why so; if not, why not?

412

12. A and B were copartners in business. It was a going concern under a contract having five years to run. A brought an action in equity against his copartner to compel him to account in a certain copartnership transaction which B had conducted secretly and was endeavoring to withhold from A his share of the profits thereof, and to pay him his share thereof. In his complaint A did not ask for a dissolution of the firm, and question arises as to whether A can maintain his action and as to the effect it has on the copartnership existence. What do you say, and why?

413

13. A and B were copartners at the time of the death of A. B thereafter sued in his own name for a firm debt contracted before the death of A. The defendant pleaded, among other defenses, the non-joinder, as parties plaintiff, of the personal representatives of A. B demurred to the defense of non-joinder. Judgment on the demurrer for whom, and why?

414

14. A made his negotiable promissory note for \$1,000 payable in six months, with interest, and agreed to sell and sold the same to X, who paid him therefor \$900. The note thereafter came into the possession of Y in due course. When the note became due Y surrendered it to the maker and took a new note therefor for the same amount in renewal. The renewal note came into the hands of Z in due course. Has A any defense to the note as against Z? If so, why so; if not, why not?

415

15. The X Trust Company was the owner of ten bonds, each for \$1,000, issued by a domestic railroad corporation. The bonds were in the usual form with coupons attached and were drawn payable to bearer. They were stolen from the Trust Company by a clerk in its employ, who pledged them with a firm of brokers as security for dealings in stock. The stock brokers took the bonds in good faith and for value before they were due.

The bonds were found, after the arrest of the clerk, in the possession of the brokers, from whom the Trust Company demanded the same. The stock brokers consult you as to their rights and liabilities in the matter. What would be your advice, and why?

416

16. A, as agent for B, entered into a contract in writing, not under seal, with C, in his own name as principal. The fact that A was B's agent was not disclosed to C at the time. Thereafter default was made by C in the performance of the contract and A began an action thereon for damages in his own name. C having learned that A was but an agent in the transaction, and was acting for B, defended, and, among other defenses, pleaded that A was not the real party in interest, and that B should be the plaintiff in the action. A demurred to that defense. Judgment on the demurrer for whom, and why?

417

17. A was the owner of a judgment against B for \$5,000. He said on an occasion that B was his friend and for that reason he would discharge it for \$1,000. X overheard the statement, and without authority falsely represented to A that he was also a friend of B's and had come to him on B's account for an assignment of the judgment for the \$1,000, which A had said he would discharge it for. A was thereby induced to assign the judgment to X for \$1,000. B having learned of the transaction, tendered \$1,000 to X and demanded a satisfaction of the judgment, which X refused to accept, demanding the face of the judgment. B consults you as to his rights in the premises, if any. What would be your advice, and why?

418

18. A as principal and B as surety duly executed and delivered to C their joint and several bond as security for the fidelity of A as agent while in C's employ. A subsequently violated his trust, when C brought an action on the bond against A and B. B alone defended, alleging in his answer as new matter that when C took the bond he knew that A had previously violated the trust reposed in him by C, and that C did not disclose such misconduct to B, who was ignorant of that fact when he signed the bond. C demurred to B's answer on the ground that it was insufficient in law upon the face thereof. Who had judgment, and why?

419

19. A was employed by the X Bank as its bookkeeper. The bank required of A that he should furnish it a bond with sufficient sureties, conditioned that he, A, should faithfully perform the duties and trust which were reposed in him as such bookkeeper and the duties of any other office, trust or employment relating to the business of the bank. A furnished the required bond, upon which B and C were sureties. After acting several years as bookkeeper A was appointed as receiving teller of the bank. While acting as teller A embezzled \$2,000 from the funds of the bank.

Upon discovering that fact the bank brought an action on the bond against A, the principal, and B and C, as sureties. The sureties defended upon the ground that A had ceased to act as bookkeeper and had become receiving teller of the bank when the embezzlement took place, and hence that the sureties were not liable upon their bond. What was the decision, and why?

420

20. A was the beneficiary named in a policy of life insurance issued by the X Company on the life of one C. A being uncertain whether the premium due in November 1897, had been paid, wrote to the company to ascertain and the company replied that it had. A relied upon this statement, and made no further inquiry until nearly a year later, when he again inquired of the company if the premiums had been paid up to that date, and he was then for the first time informed that the policy had expired under its terms by reason of the non-payment of the premium due in November, 1897. Subsequently C died, and thereupon A brought an action against the X Company to recover the amount of such policy. The defendant appeared and defended upon the ground that the policy was forfeited because the premium due in November, 1897, had not been paid. There was no dispute as to the facts. Who had judgment, and why?

421

21. The Y Fire Insurance Company issued to A a New York standard fire insurance policy for \$1,000, upon his storehouse property in the city of Albany, loss, if any, payable to B as his mortgage interest might appear. The policy provided that it would become void unless otherwise provided by an agreement indorsed thereon, if without the knowledge of the insurer foreclosure proceedings were commenced or notice was given of the sale of any property covered by the policy under or by virtue of any mortgage. It also provided that no officer, agent or other representative of the company should have power to waive any condition or provision of the policy, except such as by the terms of

the policy might be the subject of agreement, and as to those that they should not be deemed to have been waived unless the waiver should be written upon or attached to the policy. A loss having occurred, B brought an action upon the policy, when it appeared that B had previously brought suit against A to foreclose his mortgage on the premises insured, obtained a judgment, advertised the premises for sale, and that three days before the day appointed for the sale the storehouse was totally destroyed by fire. There was no waiver in writing, but prior to the foreclosure suit B orally informed D, a duly authorized agent of the Y Company, who signed the policy, that he was about to commence such a foreclosure suit, and D agreed that this might be done without injuring the plaintiff's rights under the policy. These facts being conceded, who had judgment, and why?

422

22. A, the owner and occupant of a storehouse in the city of Syracuse, made an agreement with B in consideration of certain charges paid therefor to store his, B's, furniture for safekeeping, by allotting to him in such building certain space, which was enclosed by a wooden partition with a door upon which there were two locks; the key of one was kept by B and the key of the other by A. A assured B that his goods would be safe, and would be guarded day and night. While there the most of B's goods were stolen by those in charge of the building, whereupon B sued A for the value of the property stolen. What was the relation between the parties, and who had judgment, and why?

423

23. In 1866 A deposited with B ten government bonds of the value of \$1,000 each, with instructions to B not to deliver them except upon A's written order. Subsequently C, A's wife, called for the bonds and B delivered them to her without any written order from A. Afterwards A demanded the bonds and B refused to deliver them, whereupon A sued therefor. B defended upon the ground that he

had delivered them to A's wife. There being no dispute as to the facts, who had judgment, and why?

424

24. In 1900 A was a manufacturer and dealer in hollow-ware. On the first day of January of that year B wrote to A asking him to quote him (B) his (A's) best prices for hollow-ware, to be delivered in the city of New York. On the next day A answered B's letter, sending him a catalogue of his prices, and offered to sell B such goods as he should order at a discount of 65 per cent from the catalogue prices. Upon the receipt of that offer B at once ordered a specific bill of goods which was to be delivered by A forthwith as directed. Ten days later, and after the delivery of the first bill, B ordered a second bill of the same kind of goods, which, owing to an advance in price, A refused to fill and so notified B. B having refused to pay for the first bill, A sued him (B) therefor. B appeared and admitted the complaint, but set up as a counterclaim an alleged breach of contract by A in not furnishing B with the goods described in his second order. Was B entitled to recover upon his alleged counterclaim? Give the reasons for your answer.

425

25. A owning certain bonds of the X Railroad Company, sold them to B, who relied upon the oral promise of A that if at any time he, B, became dissatisfied with the bonds, he, A, would on thirty days' notice take them back and return the money B paid therefor. Subsequently the company making default in the payment of the interest, B wrote to A that he was dissatisfied, and gave thirty days' notice that he required A to take the bonds back and refund the purchase price. Thereafter B tendered the bonds and demanded the money paid therefor, which A refused to repay. B then brought an action against A to recover the amount paid by him, B. A defended on the ground that the contract not being in writing was void under the Statute of Frauds. There being no dispute as to the facts, what was the decision, and why?

EXAMINATION PAPER.**No. 9.****AFTERNOON — FOUR HOURS.**

426

1. A locomotive engineer was injured by the machinery of the locomotive which he was running. Upon the trial of an action for damages against the railroad company the question (which was material) arose whether the engine was properly constructed or out of repair at the time of the accident. The plaintiff offered to prove, as relevant to the question, that immediately after the accident the railroad company made extensive repairs and changes in the locomotive. Was the evidence admissible or not? If so, why? If not, why not?

427

2. A locomotive engineer of the Y Railroad Company was fatally injured by the derailment of his engine, caused by a defect in the track. After his death, B, his widow (she having been appointed administratrix of his estate), brought action against the railroad company to recover damages for the loss of her husband, on the ground of negligence. On the trial the defendant offered to prove the declarations of the deceased, made on the day following the accident, tending to contradict material evidence given by the plaintiff. Objection is made that the evidence is hearsay and incompetent. What should the ruling be, and for what reason?

428

3. A brought an action against B to recover damages for the alienation of his wife's affections. On the trial A pro-

duced and offered in evidence a letter, in chief, written to him by his wife, wherein she plainly stated that she had no affection for him, A, but that B had won her affections, and that she had great love and regard for him. Objection is made as incompetent, which was overruled, and the letter received. What do you say as to the ruling? Give your reasons.

429

4. On the trial of an action wherein the plaintiff and one B had testified in plaintiff's behalf, the defendant, after plaintiff had rested, offered to prove by C material declarations relating to the merits made by both the plaintiff and B out of court, contradictory to the evidence given by them on the trial, without first having inquired of either, on the witness stand, whether or no he had made such declarations, and on that ground the plaintiff's attorney objected to the evidence offered both as to the plaintiff and B. How did the court rule, and why?

430

5. In a judicial proceeding it was material and relevant to establish that A was the legitimate son of B and C, his parents, both of whom were dead. The legitimacy was disputed. The attorney for A, the son, offered to prove by D that a short time before C, the mother of A, died, she stated to him, D, that she and B were lawful husband and wife, and that A was the fruit of their marriage. The evidence was objected to as incompetent and hearsay. How did the court rule, and why?

431

6. A was arrested in the county of Albany, and subsequently indicted in that county for having received *in that county* a certain gold watch, stolen property, he knowing the same to have been stolen. A was wearing the watch when arrested. On the trial it was shown conclusively that the watch was stolen by a pickpocket in the city of Rochester, Monroe county, and was delivered to A by the thief in Rochester. At the close of the evidence the attorney for A

requested the court to direct the jury to acquit the prisoner upon the grounds:

1st. That there was a fatal variance between the proof and allegations of the indictment as to the county in which A received the watch.

2d. That the courts of Albany county had no jurisdiction in the premises; that the defendant could, if at all, be indicted and convicted only in the county of Monroe for the offense charged.

What did the court do with the requests, and for what reason?

432

7. On the trial of an indictment the defendant gave evidence of his good character. In its charge to the jury the court said:

“The defendant also produces some evidence as to his good character, but before the week passes you will find that all these cases are to be decided upon facts by twelve common sense business men. While it is true that in doubtful cases evidence of good character may, and perhaps should be effectual to acquit from a criminal charge, it is your duty to decide the case upon the facts presented, irrespective of the evidence of character.”

The defendant excepted to the charge. Was the charge correct or not? If you say correct, state your reasons. If not correct, what is the trouble? Give your reasons and the law applicable.

433

8. The defendant, who had burglarized the jewelry store of A, while engaged in securing and stealing valuables therein was surprised by the unexpected appearance of the night watchman, and in his effort to escape, with no intent to burn or destroy the store, he accidentally overturned a lighted oil lamp from which the store took fire and was completely destroyed. The defendant was indicted for arson in the third degree for burning the store. Can he be legally convicted of the crime charged or not? State your reasons.

434

9. A, the owner of certain premises in the city of New York, employed one X, a contractor, to lay a new sidewalk in front of the same. The contractor tore up the old sidewalk and began to construct the new one, in the course of which one of his employees carelessly and negligently failed to guard and protect the work, by reason of which B, a pedestrian, without negligence on his part, was injured by a projecting flagstone in process of being laid. B now sues A, the owner, for his damages caused as above. Can he maintain his action? If so, why so; if not, why not?

435

10. A contractor was engaged in blasting rock on land adjoining the premises of A. The blasting was not done in a negligent or improper manner, nor with want of skill, but each blast caused concussion with great disturbance and vibration of the earth and air, and jarred A's house and ultimately damaged the same in the sum of \$1,000. A now consults you as to his rights in the premises. What would be your advice, and why?

436

11. A was insolvent and he knew the fact. He purchased goods of X on credit and omitted to disclose his financial condition to his vendor at the time, who would not have sold to him the goods if he had known the same. When the debt became due A could not pay, and had no property, the goods he purchased of X having been sold in the course of business and the proceeds used in paying current business debts. X now consults you as to whether he can maintain an action against A in fraud upon the facts stated. What would be your advice, and why?

437

12. A, having a wife and child, bequeathed, by his last will and testament, his entire estate of \$100,000 in government bonds to the "X Missionary Society" for the propagation of the Gospel in foreign lands. The wife consults you as to the will and its effect. What would be your advice, and why?

438

13. A father in and by his last will and testament devised to his son John a certain farm in the town of X, and the residue of his estate to his daughter Jane. At the time of the father's death John was dead and Jane, the sister, claims the farm as a lapsed devise, to the exclusion of John's son Peter, who was not in existence at the time the will was made, but who survived the testator. Who has the farm, and why?

439

14. A father drew his own will and therein and thereby bequeathed to his son John one thousand dollars in cash, and the residue of his estate, amounting to nine thousand dollars in cash, to his only other child Jane. John was one of the two subscribing witnesses to the will, which could not be proved without his testimony. John consults you as to his status under the circumstances. What would you advise him, and why?

440

15. A testator devised his estate to X in trust for the support and maintenance of the testator's son John, with power in John, in his discretion, after he arrived at the age of forty-five years, to declare the trust at an end and take over the corpus of the estate. John went into business and lost, and a judgment for a business debt was entered and docketed against him in the sum of five thousand dollars when he was forty-three years old. He now arrives at the age of forty-five and question arises as to the collectibility of the judgment out of the trust fund, both John and the trustee refusing to pay the same, and John refusing to exercise his discretion as to the ending of the trust. What do you say, and why?

441

16. An art collector having a gallery, which he desired to complete, of the paintings of one Whistler, an artist, who is dead, entered into a valid agreement with an art dealer of purchase and sale wherein he agreed to purchase and the dealer agreed to sell to him a unique painting by Whistler

for \$10,000, its fair market value. The dealer eventually refused to deliver the picture, and the collector consults you as to his right to obtain specific possession of the same. What would be your advice, and why?

442

17. A, for the purpose of defrauding his creditors, transferred his real estate to B upon a secret trust, in and by which B agreed to retransfer the property to him as soon as he forced a settlement with his creditors. Having done so, he demanded of B that he retransfer as he had agreed, which B refuses to do. A now seeks in equity to enforce the agreement as to the retransfer. What is your opinion of the transaction, and what maxim in equity is involved?

443

18. C, a stockholder of the X bank, which was duly organized under the Banking Laws of this State, desiring to be represented at a meeting of the corporation duly called, executed in proper form and delivered to B, the teller of said bank, his proxy, authorizing B to vote for him, C, at said meeting. B offered to vote on such proxy when a question arose as to its validity, and whether B could properly vote thereon. Was the proxy valid? If so, why; if not, why not?

444

19. A was the owner of one hundred shares of stock in the Y Company, for which he held a certificate that was accidentally destroyed by fire. Subsequently A made application to the Y Company to issue to him a new certificate for the shares represented by the certificate so destroyed, and the corporation, while admitting that A was the owner of such shares and that such certificate was destroyed as A claimed, still refused to issue a new certificate in the place of the one destroyed. Can the corporation be compelled to issue such new certificate, and if so, how? If not, why not?

445

20. A brought an action against the B corporation, alleging in his complaint that it was a domestic corporation duly organized under the laws of this State. The defendant appeared and answered by denying each and every allegation of the complaint. On the trial the plaintiff proved all the allegations of the complaint except the organization of the defendant, and then rested. Thereupon the defendant moved for a nonsuit upon the ground that there was no evidence of the defendant's incorporation. What was the decision, and why?

446

21. A, the wife of B, was employed by C as his stenographer and typewriter, for which C agreed to pay her \$10 per week. A was engaged in this employment for two years, and C paid her \$10 each week during that time. At the expiration of two years, by the direction of B, A left C's employment and B demanded of C \$1,040 as the compensation for his wife's services during the two years she was in his employ, which C refused to pay. Thereupon B brought an action against C to recover therefor. On the trial all the facts were admitted. At the close of the evidence each party moved for a judgment in his favor. Who had judgment, and why?

447

22. A and B were husband and wife, inhabitants of this State, and lived in a state of separation without being divorced. They were the parents of C, a son ten years of age, who was living with and in the custody of his mother. A, the father believing that it would be better for C to live with him and remain in his custody consults you as to the manner of obtaining a legal determination as to who should have the custody of the child. What would you advise, and what would be the principle upon which the court would act in determining the question?

448

23. A had one child, B. Subsequently he legally adopted as his child one C, who was a minor. Afterwards A made

his will by which he gave all the property of which he should die seized to his, A's, heirs, share and share alike. A subsequently died and his will was duly admitted to probate. B and C being uncertain in respect to their rights under A's will, consult you. What would you advise? Give the reasons for your answer.

449

24. A, who was a generous and public spirited citizen of the city of Syracuse, owned a large amount of real and personal property which was taxable and taxed against him in that city. The Legislature, however, in view of A's generosity and public spirit, and to encourage his public enterprise, enacted a local and private statute exempting A from taxation upon his real and personal property located and taxable in said city. A question having arisen as to the validity of the statute, A consults you. What do you say, was it valid? If so, why; if not, why?

450

25. A was duly elected to a city office not specially provided for in the Constitution. The term of such office was established by statute at six years. Before the expiration of A's term the Legislature passed an act which in effect extended the term of such office to nine years. Under the latter statute A claimed to be entitled to hold the office during the full term of nine years. B instituted a proceeding in the nature of a quo warranto to test the question whether A's claim that he was entitled to the office for nine years could be sustained. On the trial B proved that he was duly nominated and elected to fill such office upon the expiration of the term of six years, provided a vacancy then existed. There was no dispute as to the facts, what was the decision, and why?

EXAMINATION PAPER.

No. 10.

FORENOON — FOUR HOURS.

GROUP ONE.

PLEADING AND PRACTICE AND EVIDENCE.

451

1. You are the defendant's attorney in an action in which it is necessary to serve an affidavit of merits duly verified by the defendant. Draw such an affidavit, stating fully and correctly the facts required to be alleged therein.

452

2. A, as Commissioner of Highways of the City of New York, was by law required to summarily remove all encroachments or obstructions upon any of the streets of that city. B unlawfully erected and maintained a news-stand upon one of its streets, which C, a citizen and resident of the city, notified and demanded of A that he as such Commissioner should remove. A, however, disregarded such request and took no action in compliance therewith. C now consults you to ascertain if he can maintain any action or proceeding against A to compel him to remove such news-stand. What would be your advice? Give the reasons for your answer and the nature of C's remedy, if he has any.

453

3. In an action brought by A against B to prevent him from committing threatened waste upon the premises of A, the latter obtained an injunction restraining B therefrom, which was improvidently granted, but by a Court having jurisdiction. It was served upon B, who disobeyed the same,

when a proceeding was duly instituted against B to punish him for contempt. Can it be maintained? If so, why; if not, why?

454

4. As attorney for A you commenced an action against B upon a written contract upon which C was the sole subscribing witness. B, by his answer, denied the making of the contract. You duly subpoenaed C as a witness who promised to be present at the trial as such. After the case was called, a jury impanelled and the trial had proceeded to near the close of the plaintiff's case, you find that C is not in attendance as a witness, but that he has left the State, so that it is impossible to then obtain his testimony, which is vital to establish A's cause of action. Under the circumstances the Court states that it will grant you any relief to which you are entitled. What motion would you make, or for what relief would you apply?

455

5. A brought an action in the Supreme Court against B and C for fraud. It was tried before a jury which agreed upon a verdict in favor of A vs. B and in favor of C vs. A. When the jury returned into Court its foreman mistakenly announced that the jury had found a verdict in favor of A vs. B and C, and as announced the verdict was received and recorded by the Court. Had C any remedy? If so, what? Give the reason for your answer.

456

6. A, as trustee, brought an action to procure a determination of conflicting claims to a trust fund in his hands, alleging his readiness to deposit the money in the hands of the Court, or to make such other disposition of it as the Court should direct. After trial the Court entered a judgment directing A as such trustee to pay specified sums to the various claimants within twelve days after service of a copy of the judgment upon A. A copy of the judgment was duly served by the various claimants, with notice of entry upon A, who did not pay the sums claimed as therein directed. Thereupon the parties entitled to recover the sums so awarded instituted a proceeding to punish A for contempt

in not paying such claims, contending that the remedy for the enforcement of the judgment was by commitment for contempt and not by execution. What was the decision, and why?

457

7. A and B were co-sureties for C under and by virtue of a contract in writing between C and D, which stated only the contract between the principals and that they, A and B, were sureties for the faithful performance of the same on the part of C. A, as such surety, was compelled to pay to D \$1,000 on account of C's default. A now sues B for the \$1,000 paid and on the trial offers to prove that prior to their executing the contract as sureties, and as the consideration for his signing the same, B verbally agreed to indemnify A against loss therefrom. Objection is made thereto. What should be the ruling of the Court and why?

458

8. In an action against B for an accounting as to certain securities alleged to have been loaned by A to B, C, the wife of B, was called as a witness by A and testified to a conversation with her husband when they were alone relating to A's securities taken by B, his obligation to A for the same and his promise to secure A therefor. This evidence was objected to by B on the ground that the conversation between C and B was a confidential communication and prohibited by statute. What was the correct ruling, and why?

459

9. In an action pending in the Supreme Court the County Judge of the County of C was appointed as referee to hear and determine the issues therein. After it was tried and determined the defendant moved to vacate the order of reference and all subsequent proceedings on the ground that the Court had no jurisdiction to appoint the said County Judge as such referee because the County of C contained more than 120,000 inhabitants. There was, however, no proof as to its population when the order was made except the last enumeration made eight years previously, which showed it contained less than 120,000 inhabitants, although

the population at the time the order was made may have exceeded that number there was no proof nor public record disclosing that fact. The defendant, however, to sustain his motion, claimed that the Court should take judicial notice of the actual population of the county when the order was made, and therefore that the order should be vacated. What was the decision, and why?

460

10. A borrowed \$1,000 of the X Banking Corporation and gave his note therefor due in ninety days. Subsequently A died and B was duly appointed sole executor of A's estate. The bank afterwards sued B, as executor, to recover the amount of said note against the estate of A. B defended on the ground that the note had already been paid. On the trial the defendant gave testimony tending to prove the payment of the note by A to D, who was the cashier and a large stockholder in the X Bank. The bank then called D, who was sworn as a witness, and offered to prove by him that the note was not paid to him as claimed by B. This evidence was objected to on the ground that D was incompetent because interested in the event of the action. What was the decision, and why?

461

11. A, as administrator of the estate of B, brought an action against C to set aside a chattel mortgage given by B to C, as being in fraud of the creditors of B on the theory that the mortgage was made with the understanding that B might sell and dispose of the mortgaged property and apply the avails to his own use. On the trial A offered to prove that when the mortgage was given, C's agent, who acted for him, stated to B that the giving of the mortgage would not in any way effect him. This evidence was objected to by C as incompetent and inadmissible. What was the ruling, and why?

462

12. A was indicted and on trial for the crime of murder in the first degree. His defense was insanity, and there was some evidence, though slight, to establish that defense. Upon whom then rested the burden of showing the defendant's sanity when the crime was committed, and why?

GROUP TWO.
SUBSTANTIVE LAW.

(Begin new page with the above heading.)

463

13. A conveyed by deed his farm to B, for which B paid \$2,000 cash, and gave A his note for \$1,000 due at one year for the balance of the purchase price. B sold the farm to C for \$1,000 in advance of the purchase price for which he had bought, and, B not having recorded his deed from A, by agreement between A, B and C, C paid to B \$2,000 which he had paid A, also the \$1,000, the advance purchase price, and also paid, took up and surrendered to B the \$1,000 note of B held by A; then B surrendered up to A his unrecorded deed, which was then destroyed, and A gave a deed of the farm direct to C, which C immediately recorded. Question now arises as between B and C, who has the title to the farm. What do you say, and for what reason?

464

14. A and B, husband and wife, had title in fee, as tenants by the entirety, to valuable real estate. They had one child, C, issue of the marriage. A procured a divorce from B, his wife, for principal cause, and shortly thereafter died intestate, leaving B and C surviving. Who now owns the real estate? State your reasons fully.

465

15. A devised the use of his farm to B for life, and on his death the farm to go in fee to C. B, being in possession under the devise, sowed the entire farm to wheat, but before the crop was harvested or matured he died and C took possession of the farm as remainderman. The crop having matured, the administrators of B undertook to harvest the same, when C forbade them, claiming that the wheat belonged to him, and that they were trespassers in entering on the farm to harvest it. To whom does the wheat belong, and what are the rights of the parties? State your reasons.

466

16. A and B entered into an agreement by which A, who was an artist, was to make a crayon portrait of B's wife, for which he, B, was to pay therefor \$75.00, if it was in all respects satisfactory to him, B, otherwise B was to be under no obligation to accept or pay for it. After the portrait was completed A took it to B, who honestly declared that it was not satisfactory to him, either as to its likeness or the quality of the work, and refused to accept or pay for it. A sued B to recover the \$75.00. B defended, setting up the contract, and alleged that the portrait was unsatisfactory to him both as to its likeness and the quality of the work. On the trial plaintiff admitted the terms of the contract, proved his performance of the work, and admitted the objections made to the portrait by defendant, and called several experts as witnesses, who testified that the work of the portrait was first-class and its likeness remarkably good, and rested. The defendant also rested, offering no evidence. Defendant then asked for a non-suit. Plaintiff asked for direction of a verdict against defendant for \$75.00. What did the Court do, and for what reason?

467

17. A and B were joint and several makers of a promissory note held by C. On the day after the expiration of six years from maturity, when the note was outlawed, A, without the knowledge or consent of B, paid to C the unpaid interest for six years, which C, at A's request, endorsed on the note. One year thereafter, the note still being unpaid, C sued A and B thereon, when B interposed as a defense the statute of limitations. Was B's defense successful or not, and why?

468

18. A loaned to the firm of B and C \$5,000 under an agreement by which the firm was to pay him for the use thereof ten per cent of the profits of its business during the succeeding five years. Afterwards D, who had become a creditor of the firm upon a transaction had during the existence of the agreement, sued A, B and C for the indebtedness due him, alleging their liability thereon as copartners,

upon the facts stated. State whether or not A was liable in the action, giving the reasons for your answer.

469

19. A and B were copartners in business. The firm was insolvent, but had valuable assets. The firm was indebted to C, who was the wife of B, in an amount equal to the value of the assets for money loaned to the firm. The firm was also indebted in the same amount to D, who was A's wife, for money loaned. B, without the knowledge or consent of his partner, A, transferred the entire assets to C, his wife, in payment of her debt. Neither A nor B had any property except what was in the firm's assets. There was then no bankruptcy law. What do you say as to the legality of B's transaction, and as to the rights and remedy, if any, of D? State your reasons.

470

†

20. A and B exchanged promissory notes for the same amount made by them respectively payable to the order of the other. The exchange was made for the mutual accommodation of the parties. A had the note he received discounted for his own benefit, but when it became due it was not paid; it was worthless when issued. Nevertheless B, as the owner and holder thereof, sued A on the note the latter had made in the transaction. A defended and pleaded failure of consideration as above stated. Those facts appearing, judgment for whom, and why?

471

21. In a transaction had between A and B, A made and delivered to B his negotiable promissory note. The note, under the facts of the transaction, was fraudulent as between the parties. The note came into the hands of C, who was a holder in due course. A refused to pay the note when due and was sued thereon by C. A defended, and in his answer admitted the making and delivery of the note, and its non-payment, and then set up facts which, if proven, would establish its fraudulent character. On the trial C offered the note in evidence, proved the amount due thereon and rested. A then proved that the note was fraudulent in its inception,

and also rested. Both parties then moved for judgment. Judgment for whom, and why?

472

22. A merchant authorized his bookkeeper to draw and negotiate commercial paper for his use, and he did so for a number of years through one X, a note broker, all of which paper the merchant regularly paid. On an occasion, with intent to defraud his principal and for the purpose of raising money for his own use, the clerk presented his principal's note in the usual form to the broker and had it discounted by him. X paid value therefor without notice or circumstances suggesting the suspicion that it was not of the same character as the paper previously discontinued by him. The clerk absconded with the proceeds of the note. Question arises as to the liability of the merchant thereon to the broker. What do you say, and why?

473

23. A, the owner of certain real property, authorized B, as his agent, to sell the same for \$10,000, and instructed him to make no representations concerning its title or value. In fraud of A, and with intent to defraud him, as well as C, an intending purchaser, B made false and fraudulent representations both as to its title and value, and thereby induced C to purchase the property for \$15,000, which amount C paid to B, who paid over \$10,000 thereof to A, who accepted the same in good faith and in ignorance of B's fraud in the premises. C discovered the fraud, rescinded the contract, tendered to A a reconveyance of the property and sued him to recover back the consideration paid. On the facts stated, is C entitled to recover from A the \$15,000 paid to his agent? If so, why so; if not, why not?

474

24. A was surety for B, who owed C \$5,000. C had in addition as collateral security for the debt \$5,000 par value of the bonds of the X Co. B tendered the amount of the debt to C, when it became due, but the latter requested him

not to pay it then as he had no present use for the money and B withdrew his tender. The bonds subsequently became worthless and B insolvent. C thereupon tendered the bonds to A and demanded payment of the debt from him. A then first learned of the above transaction. He now consults you as to his liability under the circumstances disclosed. What would be your advice, and why?

475

25. A and B were co-sureties for C for the payment of a debt for \$5,000 which C owed to B. A, as surety, compromised the debt for \$2,500, which sum he paid to D in settlement of the same. He now consults you as to his rights against B, his co-surety under the circumstances above disclosed. What would be your advice, and why? Give your reasons.

EXAMINATION PAPER.

No. 10.

AFTERNOON — FOUR HOURS.

GROUP TWO — SUBSTANTIVE LAW (Continued).

476

1. A was the owner in fee and in possession of a lot of land upon which a house was in process of construction by one B, under a contract binding him, B, to furnish materials and complete the building above the foundation within a specified time not yet expired, and for a sum payable after its completion. Before its completion the X Insurance Co. issued to A a policy of fire insurance on such building for its full value. Subsequently a fire occurred and the house was totally destroyed. Whereupon A brought an action upon such policy to recover the value of the building destroyed, although A had paid B nothing for the work and materials furnished by him. Who had judgment, and why?

477

2. A held an accident policy of insurance on his life in the T. Accident Insurance Co. It provided that the insurance company should not be liable for the death of the insured from "inhaling of gas." The insured was found dead in bed in his room at the hotel where he was stopping. His death resulted from the accidental and unconscious inhaling of illuminating gas which had in some way been turned on so that the atmosphere of the room was filled with it. An action was subsequently brought on said policy by the personal representatives of A and the insurance company defended upon the sole ground that A's death was caused by the inhaling of gas within the meaning of such

policy, and consequently the company was not liable. The plaintiff, however, insisted that the exemption in the policy from liability for death from inhaling of gas had no application in this case, but applied only to a voluntary and intelligent act on the part of the insured and not to an involuntary and unconscious one. Who had judgment, and why?

478

3. A, B and C were joint owners of a sailing vessel. A entered into a contract with B and C by which he, A, agreed to take the vessel to sail on shares. He to man her, pay the crew, furnish supplies and have absolute control and management thereof. The vessel was lost through the negligence of A. Is A liable to his co-owners? If so, why so; if not, why not?

479

4. A and B entered into a contract whereby A agreed to manufacture for B 100 pairs of pruning shears in all respects like the sample furnished. B was to furnish the rough castings for the handles, etc., and A to furnish the blades and complete their manufacture so as to conform to the sample furnished. B delivered the castings and A manufactured the shears, but failed to make them conform to the sample, and they were consequently worthless. The question has arisen between the parties in whom the title to the shears which have been completed rests, and what was the nature of the contract. What do you say, and why?

480

5. A sold to B a supposed valuable horse for \$1,000, warranting it to be gentle and kind, upon which warranty B relied. The horse was delivered to B, who paid the price, and he immediately hitched it, when the horse proved to be most vicious and unkind, and, clearly, not as warranted. B at once duly offered to return the horse to A (which A refused to accept), and notified him that he rescinded the sale and purchase, and demanded of A the return of \$1,000, the paid purchase price, which A refused. B then sued A for \$1,000, the purchase price of

the horse. On the trial plaintiff established the foregoing facts and rested. A, having answered, appeared on the trial, but offered no evidence. The evidence being closed, plaintiff asked the Court to hold that he, plaintiff, had the right to rescind, and, from the evidence, he had rescinded the sale and purchase, and was entitled to \$1,000, the purchase price paid, as and for his damages against A, and asked the Court to direct a verdict against A for that amount accordingly. To all of which the defendant objected. What did the Court do, and for what reason?

481

6. A meeting B, who was driving a runabout auto which he owned, said, "I'll give you \$500 for that automobile and pay you \$150 to run it and my touring car (which A owned) for one month, commencing to-morrow morning." B answered, "All right, I agree. The automobile is your's. I'll bring it to you to-morrow morning and commence my work." A replied, "All right. I'll expect you," and they separated. The following morning B appeared with the automobile and offered it, and also his services, as agreed. A refused to accept the automobile, and also told B that he did not want his services, and, without just cause, repudiated his entire agreement. What, if any, are the rights of B against A? State your reasons.

482

7. A and B were jointly indicted for burglary. When arranged for trial they were represented by separate counsel, and A demanded that he be tried separately, to which B objected and demanded that they be tried together. What did the Court direct? State the rule applicable to separate trials of defendants jointly indicted.

483

8. A, on returning from a hunt, in the night time, and with no intent or purpose except to unload the same, negligently discharged his gun into the highway and killed X who was passing. Is A guilty of any crime? If so, of what crime; if not, why not?

484

9. A and B agreed at Niagara Falls to go across the Suspension Bridge into Canada and fight a duel with revolvers at sunrise the following morning. They went accordingly, C going with A as his second, and D going with B as his second. The duel was fought according to program (C and D acting as seconds for their respective principals), in which A inflicted a wound upon B whereof B died the following day in Canada. The other three returned to Niagara Falls immediately, and within three months all were indicted and put on trial in Albany county because of the transaction causing B's death. State whether all or either of them were convicted. If not all, who, if any, were convicted and for what crime; if not, why not?

485

10. A brought an action against the X. R. R. Co. to recover damages for personal injuries alleged to have been sustained by reason of the negligence of the defendant, claiming in his complaint to have suffered permanent spinal and internal injuries. Defendant, by its answer, denied the negligence, and also denied that it had any knowledge of the nature or extent of plaintiff's injuries, but was wholly ignorant thereof. Before the trial the defendant, on affidavits setting forth the foregoing facts, duly made a motion for the Court to grant an order requiring the plaintiff to submit to a physical examination as to the injuries complained of, by a physician or surgeon. The attorney for the plaintiff strenuously objected on the ground that the Court did not have the legal power or right to grant such an order. How did the Court decide, and if the motion was granted, what was its object?

486

11. A, with intent to deceive B and to induce him to purchase 100 shares of stock of the X corporation, falsely and fraudulently represented to B that the title to certain

lands was in the corporation. B relying upon such representations purchased of the X corporation 100 shares of its stock, paying therefor \$10,000. The shares were not worth more than \$5,000, owing to the fact that the company did not own the lands as represented by A. When these facts became known to B he brought an action against A to recover the damages he sustained by reason of such false representations, which were conceded to be \$5,000. On the trial A alleged and proved by the undisputed evidence that he, A, received no part of the purchase money and derived no benefit whatever from the sale. At the conclusion of the plaintiff's evidence A moved for a non-suit upon the ground that he had no interest in the transaction and hence was not liable to B. What was the decision and why?

487

12. A, who was but twenty years of age, sold to B a carriage horse, which he falsely and fraudulently represented to be sound, intending thereby to deceive and defraud B. B relied upon the representations in purchasing the horse, which proved to be unsound and worthless. B did not return or offer to return the horse, nor did he rescind or disaffirm the sale, but brought an action against A to recover damages for his false and fraudulent representations in making the sale. A's only defense interposed was infancy. Judgment for whom, and why?

488

13. A died leaving a valid will whereby he bequeathed to his grandson, B, a legacy of \$3,000 and directed his executor named therein to pay to B that sum within one year after his, A's, death. A by his said will then devised and bequeathed the remainder of his estate to C and duly constituted and appointed him the sole executor of his will. C qualified and acted as such, accepted the devise under the will and took possession of the property. A's estate consisted chiefly of real property, there being only enough personal to discharge and pay his debts and funeral expenses. B demanded of C, the executor and devisee under A's will,

the payment of his legacy, which C refused on the ground that it was payable out of the personal property and not from the real estate and as the personal property was insufficient to pay it he was not liable. Thereupon B brought an action against C to recover his legacy. Upon the trial the foregoing facts were proved and not denied. Who should have judgment and why?

439

14. A died, leaving a widow and B and C, two sons, his only heirs-at-law and next of kin him surviving. He left a last will and testament, which was duly probated, containing several devises and bequests, among which was a bequest of \$50,000 to his widow, and a bequest of like amount to his son B. He left nothing to his son C, the will providing as follows: "I hereby disinherit my ungrateful son, C. He, C, is to have or take nothing from my property in any way or under no circumstances, and I hereby cut him off entirely from any inheritance from my estate." The will contained a bequest of \$24,000 to X, which failed, he having died prior to the testator's death, thus lapsing the legacy, which left that amount undisposed of by the will. Who takes the \$24,000, and for what reason?

490

15. A, who was never married, died intestate owning a large amount of real property. He left him surviving a brother and a sister, also B, C and D, children of a deceased sister, and E, the child of a deceased brother. How, and in what proportion, will the property descend, and for what reason?

491

16. A desired to purchase B's estate at X, and after making, without B's knowledge, as he believed, a personal inspection of the same, he offered B \$10,000 in cash therefor, which offer B accepted. After the purchase price was paid and the deed was delivered, A endeavored to take possession of the estate which he had viewed, when he was informed, for the first time, that a certain farm lot which

he mistakenly believed to be a part of the same, and which was an inducing cause of his buying, was the property of another, and that the land he had purchased, and which was included in his deed, was worth but \$6,000. A thereupon brought an action in equity against B to rescind the deed and to restore the parties to their original positions. The above facts appearing, judgment for whom, and why?

492

17. A brought an action in equity, in the usual form, to foreclose a mortgage. The complaint alleged the execution of the bond to which the mortgage was given as collateral and demanded the sale of the mortgaged premises. The mortgagor defended, and in his answer set up facts which tended to establish the invalidity of the mortgage. On the trial the plaintiff failed to establish the mortgage. He then asked permission to prove the loan for which the bond and mortgage were given, and to recover a judgment at law upon the debt. What should be the ruling of the Court, and why?

493

18. A being indebted to B conveys to him by a deed, absolute on its face, a parcel of land as security for the debt. Thereafter A tenders to B the whole amount due, with interest, but B claims that he owns the land and that he took the deed in payment of the debt that A owed to him. There is no writing between the parties except the deed which is on record. What are A's rights, and how can he enforce them, if any?

494

19. You are called upon to incorporate a stock corporation under the Business Corporations Law. State the requirements as to the value of the shares of stock therein, and as to the amount of capital it must have to begin business with.

495

20. A corporation, by resolution of its board of directors, appointed X as its general agent to purchase supplies for its corporate purposes. A by-law of the corporation spe-

cifically provided that no agent or employee of the company should have the right or power to contract any debts or to create any obligation imposing any liability on the company unless expressly authorized so to do by a majority of the board of trustees at a meeting of the board. X, as such agent, without such authorization, contracted to purchase supplies for the aforesaid corporate purposes from A, who knew that X was such agent, but had no knowledge of the said by-law. The corporation on learning of the transaction repudiated the contract, and, on being sued for damages for its breach, set up the by-law as a defense thereto. On the facts stated, who should have judgment, and why?

496

21. The president of a business corporation paid his individual debt to A in the sum of \$1,000 with a check of the corporation. A deposited the check and it was paid in due course. The president at the time was a defaulter to the corporation, and had no authority to use the checks for the purposes aforesaid. A accepted the check in good faith and without knowledge of the conditions. The receiver of the corporation, duly appointed, now demands of A the amount of the check and A consults you as to his liability, if any. What would be your advice, and why?

497

22. John, the fourteen-year-old son of X, a farmer, hired out to a neighbor to do farm work at \$30 a month. X wanted his boy at home and so told the neighbor within a week after he began to work for him; he also said that if the boy worked he wanted his wages paid to him (the father). The neighbor paid no attention to X and paid the boy his wages for a full year's services. X now sues him to recover the same. Who should have judgment, and why?

498

23. A married woman living separate and apart from her husband purchased, as such wife, necessary groceries

for her own use of the reasonable worth and value of \$100. The grocer knew of the separation and charged the account to the husband. The husband refused to pay. In an action brought to recover the value of the necessities aforesaid the above facts appeared. Judgment for whom, and why?

499

24. A statute provided that the State, for the purpose of building a barge canal, could, in the exercise of its right of eminent domain, condemn and take for the public use certain lands and premises, with the right to the State to take immediate possession thereof before condemnation and payment. The statute appropriated sufficient State moneys to compensate the owner as soon as the value of his estate so taken was ascertained in the proceeding. Question arises as to the validity of that statute under the Constitution. What would be your advice? Give your reasons.

500

25. A statute was enacted which regulated the hours of work of journeymen tailors. It was clearly oppressive and in violation of their constitutional rights and privileges. The statute made it the duty of the Commissioner of Labor to enforce its provisions, and he proceeded to do so. X, a wealthy and philanthropic banker, residing in New York city, knowing their want of cohesion and the lack of funds among the journeymen tailors, for their benefit, brought an action in equity against the Commissioner of Labor to restrain the enforcement of the act. The above facts being conceded, will the action lie? If so, why so; if not, why not?

EXAMINATION PAPER.

No. 11.

FORENOON — FOUR HOURS.

GROUP ONE.

PLEADING AND PRACTICE AND EVIDENCE.

(Copy this group heading.)

501.

1. Draw an affidavit of the service of a subpoena in an action pending in the Supreme Court on a witness who lives ten miles from the Court House.

502.

2. Your client is charged before a justice of the peace with the crime of petit larceny. You have examined the deposition on which the warrant was issued and learn therefrom that it does not state facts tending to show that a crime had been committed nor reasonable grounds to believe that your client, who was named therein, committed it, if it did so state. Can you obtain a writ restraining the magistrate from hearing the case? If so, what writ; and if not, why not? Give your reasons for your answer.

503.

3. Give a state of facts under which an order of arrest could be issued in an action, where the right to arrest depends upon the nature of the action.

504.

4. In an action in the Supreme Court, the plaintiff demurred to the defense consisting of new matter contained in

defendant's answer on the ground that it was insufficient in law upon the face thereof. The defendant had neglected to demur to plaintiff's complaint. On the argument of the demurrer, it was conceded that both pleadings were demurrable, the complaint for the reason that it did not state facts sufficient to constitute a cause of action. How will the Court then decide the controversy?

505.

5. On the trial of an action defendant claimed under the pleadings the affirmative and the right to open the case and to close to the jury. The Court overruled the defendant's claim, to which he excepted and proceeded with the trial.

He was beaten. The only exception he had in the case was the one above stated.

Will an appellate court reverse the judgment predicated on the above exception only, provided it is satisfied that it was well taken? Give the reasons for your answer.

506.

6. For what length of time is a judgment of the Supreme Court duly docketed in the County Clerk's office a lien on real property in the county of the judgment debtor?

507.

7. A was indicted for forging the name of B to a promissory note and uttering the same.

On the trial the District Attorney called several qualified witnesses, who testified that, in their opinion, the name signed to the note was not in the handwriting of B. Although B was subpoenaed by the people, and in court, he was not called to disprove the signature.

At the close of the People's case A's counsel moved the Court to advise the jury to acquit, on the sole ground that B had not testified nor disputed the signature which was necessary in order to convict. What did the Court do, and for what reason?

508.

8. A held B's past due promissory note for \$1,000, given for money loaned.

At A's request, B, who was unable to pay cash, made a written bill of sale of his four horses to A, in payment of the note, which he then surrendered to B. A took immediate possession of the horses.

The following day, C, one of B's creditors, obtained judgment against B, issued execution and levied upon and took possession of the horses.

A at once sued C in conversion to recover the value of the horses.

C defends upon the ground that the bill of sale to A was fraudulent and void and given with intent to cheat and defraud C and other creditors of B.

On the trial, the defendant offered to prove certain declarations of B, made after the bill of sale and possession of the horses were given to A, which tended to show the fraudulent intent of B in the transaction with A. A's counsel objects to the evidence as incompetent. How did the Court rule, and why?

509.

9. The probate of A's will was contested on the ground that A, at the time of its execution, neither declared it to be his will, nor requested the attesting witnesses to sign as such.

B, who was a beneficiary under the will, was present with the testator and the two witnesses when the will was executed, but he took no part in the conversation which occurred, all that was said and done was between A and the witnesses. He, B, neither spoke, nor was spoken to.

On the hearing B was called as a witness on behalf of the proponent of the will, and was asked to state what was done and said by A at the time the will was executed. Due and timely objection was made by the contestant.

How did the Surrogate rule, and for what reasons?

510.

10. A had verbally agreed with B that the latter should do the carpenter work upon a certain building which A was about to erect.

They agreed to put the contract in writing, and, for that

purpose, at A's request, they went to the law office of C, who was A's attorney and legal adviser whenever he needed an attorney's services. A and B stated the terms of the contract to C, who reduced it to writing, and the same was then and there signed by both A and B. A paid C for his services and the party then left the office.

On the trial of an action thereafter brought by B against A to recover for the work done under the contract, its meaning and construction being in dispute, B called C as a witness and asked him to state the conversation between A and B in his presence, at the time he was preparing the written contract. A objects that the conversation is privileged and that C, being his attorney, was debarred from disclosing it.

How did the Court decide, and for what reason?

511.

11. A and B, who were without fault, were injured by a runaway team of C. Both claimed that C's negligence was the cause of their injury, and claimed damages against him. He settled with and paid A his damages without litigation, but refused to pay B, who thereupon sued C, basing his claim on the aforesaid negligence, which C denied.

On the trial B offered to prove C's settlement with A as an admission of his, C's liability, both claims having arisen out of the same transaction. C objects to the evidence. How should the Court rule, and why?

512.

12. A was indicted for the crime of wilfully and feloniously having and passing counterfeit money upon B on March 10, 1909. On the trial, the District Attorney offered to show that, on the previous day, A had and passed counterfeit money of the same kind and denomination upon C, and also upon D.

The defendant objects to the evidence as incompetent, and as tending to prove a crime against the defendant other than the one for which he was on trial. How did the Court rule, and why?

GROUP TWO.

SUBSTANTIVE LAW.

(Begin new page with above heading.)

513.

13. A, who had duly conveyed a life interest in a house and lot to his wife, B, conveyed the premises to C, his daughter, subject to B's life interest. C had a husband, D, and two children were born of their marriage. C, who never was in actual possession of the property, died before B, who had the actual possession. After C's death, her husband, D, brought an action against B to recover possession of the property. B defends.

Judgment for whom, and why? On what did D base his claim?

514.

14. A, the owner of certain real property, executed and delivered a deed thereof to B, the grantee named therein, on the oral condition which accompanied the delivery that if A could, within a year, find a purchaser thereof for \$5,000 more than B paid him for it, that he, B, would give him, A, the benefit thereof and would reconvey to A so as to enable him to make the sale.

A has found a purchaser as above and has made due demand on B for a reconveyance as agreed, but B refuses. A now consults you as to his rights and remedies against B, if any, under the circumstances stated. What would be your advice, and why?

515.

15. A had the record title, and claimed to be the owner in fee of a certain tract of land. At the same time B was in actual possession of the land, claiming under a title adverse to that of A. C, knowing the facts, for a good and valuable consideration, purchased and took a deed of the premises from A, and immediately brought an action of ejectment against B to recover possession. B defends.

Judgment for whom, and why?

516.

16. A and B duly entered into a contract in writing in and by which A employed B as a clerk for one year from January 1, 1907, to January 1, 1908, at an annual salary of \$5,000, payable monthly. B worked for A for the year, and on January 1, 1908, nothing being said, continued his work as before until January 31, 1908, when A, on paying him his month's wages, summarily discharged him without cause.

B has been unable to procure work now for six months, and consults you as to his status under his contract with A as above. What would be your advice, and why?

517.

17. A made a valid agreement in writing with B, that, on the first day of the following month, he would sell and deliver to B his valuable coach team at the agreed price of one thousand dollars. In reliance upon A's fulfilling his agreement, C had agreed in writing to purchase said team of B and pay for the same fifteen hundred dollars.

Before the time arrived for A to fulfill his agreement, the stable wherein the horses were kept was struck by lightning and both horses were killed.

On the day following the time when A was to have delivered the horses, and failing so to do, B brought an action against A to recover his prospective profit of five hundred dollars damages for A's breach of his contract. A defends.

Judgment for whom, and why?

518.

18. A and B were co-partners, engaged in the coal business under the firm name of A & Co. The firm entered into a valid contract with C to sell to him one thousand tons of a certain quality and grade of coal, to be delivered two hundred tons monthly thereafter, at an agreed price, and C agreed to pay therefor as delivered.

After the firm delivered four hundred tons of the coal to C, under the contract, the firm was dissolved, B retiring,

whose place was taken by D, and thereafter the business was continued by A and D, as co-partners, under the same firm name, A & Co. Notice of the dissolution of the old firm and the formation of the new one was duly given to C. C immediately notified the new firm that he would not accept any coal shipped by it under the contract. The new firm has proffered to fulfill the contract by shipping the balance of the coal to C, to be of the same grade and quality called for by the contract, but C still refuses to accept it. The firm of A & D consult you as to its rights and remedies in the premises.

What do you advise, and for what reason?

519.

19. A and B were co-partners. B owed to X a personal debt, and in payment thereof, without the knowledge of A, B turned over to X ten thousand dollars of the assets of the co-partnership. X acted in good faith and had no knowledge at the time that he was receiving co-partnership property.

Six months thereafter the firm failed and a receiver thereof was appointed. The receiver now consults you as to his right, if any, to recover from X the ten thousand dollars so paid as aforesaid. What do you say, and why?

520.

20. A was the holder in due course of a promissory note made by X. He endorsed it in blank and placed it in his safe for security, from which place it was feloniously stolen. Thereafter the note came into the possession of B, who was a holder in due course. When the note became due it was presented for payment and payment thereof refused, of all of which A had due notice.

Thereafter B sold the note to C for value, who succeeded to the rights of B thereunder. C has sued A on the note, who pleads the above facts as a defense thereto in the hands of C. Is his defense valid? If so, why so; if not, why not?

521.

21. X, the drawer of a check, procured it to be certified and then delivered it to A, the payee therein named, for value. A, for value, endorsed and transferred it to B. Before B, in due course and without delay could present it to the bank for payment, the bank failed. B now seeks to recover on the check against X and A. Can he do so? If so, why so; if not, why not?

522.

22. A directed his clerk to enter into a written contract for him, and in his name, with X, for the purchase of 1,000 barrels of flour at \$10 a barrel. The clerk negotiated the sale with X. In the transaction the clerk failed to disclose the name of his principal and executed a written contract under seal in his own name for the flour. X defaulted on the contract. A, now, as the undisclosed principal, seeks to recover from X his damages by reason of the breach of the contract. X consults you as to his liability thereon to A. What would you advise him, and why?

523.

23. A, an agent, entrusted by B with the possession of certain goods for sale, made false and fraudulent representations to C concerning them, by means of which he effected a sale. B was ignorant of the representations and did not authorize them. C was damnified by the sale. What are C's rights in the premises as against B, if any? State your reasons.

524.

24. On the certificate of A's guaranty, B is employed as a clerk in a bank. He is employed generally, his contract having no definite time to run. A notifies the bank that he will not continue B's surety any longer and requests that he be relieved as such. The bank refuses. Thereafter B in his guaranteed employment becomes a defaulter. State the rule governing the surety's liability.

525.

25. A was surety for B on a contract made between the latter and C. B had pledged with C as collateral security for the performance of his contract 1,000 shares of mining stock worth \$5,000. B defaulted in the performance of his contract. C did nothing in the premises and made no attempt to collect his debt or to proceed against the fund. During the time of the delay, B became insolvent and the mining stock worthless. C now demands that A make good his guaranty. A consults you as to his liability under the circumstances stated. What do you say, and why?

EXAMINATION PAPER.**No. 11.****AFTERNOON — FOUR HOURS.**

GROUP TWO — SUBSTANTIVE LAW (Continued.)**526.**

1. A policy of fire insurance contained this provision: "This entire policy, unless otherwise provided by agreement, endorsed hereon or added hereto, shall be void * * * if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days." There was no contrary agreement endorsed upon or added to the policy and no claim that such an agreement had been made or that the provision had been waived. The building described in the policy was a tenement house of the plaintiff situated in the village of X. Plaintiff lived in the village of Y, twenty miles distant. He had rented the property to a tenant for one year from the first day of May, 1908, and the tenant was in possession when the policy was issued. Thereafter and during the life of the policy, and on June 1, 1908, the tenant, without the knowledge of the owner, vacated the premises and they became and were vacant and unoccupied for thirty days thereafter before the owner discovered the fact. The owner thereupon immediately let the premises to another tenant, who went into possession on July 1, 1908. Six months thereafter, from causes which had no relation to the premises being either vacant or unoccupied at any time, the house was totally destroyed by fire. The insurance company refuses to pay the loss predicated upon the above clause. The owner consults you. What would be your advice, and why?

527.

2. A, in good faith, procured a policy of insurance on his life in a regular insurance company and made it payable to X as sole beneficiary. X had absolutely no insurable interest in the life of A, who paid all the premiums on the policy. The policy was silent as to changes in the beneficiary. A subsequently substituted his wife as the beneficiary of the policy in the place and stead of X, who knew nothing of the change. When A died, both the widow and X claimed the proceeds of the policy. The insurance company refuses to pay the policy, claiming it to be a wager policy, void at its inception. Can it be compelled to pay? If so, to whom; if not, why not?

528.

3. X Cold Storage Company received from A, for hire, 100 bushels of choice apples, in perfect condition, to keep in cold storage for preservation for the period of six months. At the end of the period, when A went to remove them, it was discovered that the apples, through the negligence of the X Company, had been frozen and were worthless.

The warehouse receipt which the X Company gave to, and was accepted by, B, when the apples were received, provided that "perishable goods are received at owner's risk."

Upon whom does the loss of the apples fall? What was the nature of the transaction? State your reasons.

529.

4. A commission merchant having in his possession for sale certain goods, the property of X, deposited them with Y, a creditor, to secure an antecedent personal debt of \$1,000. Y, who believed the agent to be the owner of the property at the time of its receipt, has the goods in his possession and refuses to return them to X on demand. The commission merchant is insolvent. X consults you as to his rights in the premises. What do you advise, and why?

530.

5. A, a manufacturer of iron wheels, agreed to manufacture and deliver to B 10,000 wheels to be manufactured, of a kind and quality specified, at a fixed price. The contract was in writing, in which there was no warranty. The wheels were delivered to B under circumstances which rendered an inspection of them impracticable, who accepted and paid for them. It subsequently developed that the wheels had a latent defect which was not discernible, caused by the process of manufacture, and were worthless. B now sues A for his damages arising out of the transaction. Can he recover? If so, why so; if not, why not?

531.

6. The X Company, wholesale dealers, sold to B, a merchant, a large bill of millinery goods designed for his spring trade, to be delivered on or before the first day of March following, at an agreed price. The goods were not delivered until the middle of April and were then accepted, without protest by B.

The X Company's failure to deliver, at the time agreed, seriously damaged B's trade, for which B claims damages. The X Company has sued B for the purchase price of the goods. B wants to know whether he has a valid claim for damages, and if so, whether he can counterclaim such damages in the action, or, if he has waived his claim for damages by accepting and using the goods. What do you say, and why?

532.

7. On the trial of a criminal action the defendant gave evidence of his good character. The District Attorney asked the Court to charge the jury "that if it was satisfied that the testimony in the case was conclusive and positive as to the prisoner's guilt, that the evidence of his previous good character would be of no avail." Should the Court so charge or refuse? Give your reasons.

533.

8. A was indicted for a misdemeanor. The case was called for trial. A's counsel appeared without his client and asked for a postponement, which was refused. The Court thereupon directed that the trial proceed. The prisoner's counsel objected to a trial being had in the absence of the defendant. His objection was overruled, to which he duly excepted. A jury was then impaneled, the case tried and submitted to the jury, which found the prisoner guilty.

Question arises as to the validity of the verdict. What do you say, and why?

534.

9. To an indictment, charging him with murder, the defendant, when arraigned, plead "not guilty." On the trial his counsel offered evidence tending to show that the defendant was insane at the time of the commission of the alleged offense. The District Attorney objected to the evidence as incompetent under defendant's plea. How did the Court rule, and why?

535.

10. An able-bodied and vigorous lady, in good health, was about to alight from a street car whereon she was a passenger, when the conductor, under no obligation in the discharge of his duties to do so, assumed to assist her, and did so, but in such a negligent manner by suddenly withdrawing his support, as to cause the lady to fall and become severely injured. She was free from fault. The Railway Company being under no obligation to supply the aid of a servant in assisting the lady to alight, the question has arisen whether or not it is liable to the lady for her injuries so caused by the negligence of the conductor, who was the servant of the company.

What do you say? Give your reasons.

536.

11. A, who was in occupation as lessee of B's farm, when the lease was about to expire, had a public auction, for the sale of his personal property thereon situated.

When the auctioneer put up and offered for sale, to the highest bidder, certain property, B announced, in the presence and hearing of all present, "I forbid the sale of that property, it is mine." The property, in fact, belonged to A, but B honestly thought it was his, and made the declaration without malice and without intention to injure A, but for the purpose of protecting what he honestly thought to be his own rights. Because of B's announcement, however, the property brought only one-half of its value, or what it would have sold for had the announcement not been made, to A's damage of one hundred dollars.

A wants to know whether or not he has a good cause of action against B.

What do you say, and for what reason?

537.

12. A and B were passengers on a train of the N. Y. C. & H. R. R. Co., running between Albany and New York. A was palpably drunk and boisterously disorderly; he annoyed the passengers generally, refused to be quieted by the conductor, and in his presence, without cause, wrongfully assaulted and beat B during the journey. Question arises as to the liability of the railroad company to B for the wrongful act of A under the circumstances stated. State the rule governing the situation.

538.

13. A merchant doing business in the city of New York, in and by his last will, directed his executor therein named to continue his business for three years after his death. At that time his general estate was valued at \$100,000, of which \$10,000 was invested in the business. The executor continued the business as directed. At the end of the three-year period it was found that the assets of the business had increased from \$10,000 to \$20,000, and its debts by \$50,000. The business creditors to whom the increased indebtedness is due now consult you as to their right to have recourse against the general assets of the estate for the debts contracted by the executor under the circumstances. What do you say, and why?

539.

14. An attorney, as requested by A, went to A's residence and drew his will as directed by A, all in proper form. A was in all respects capable of making his last will and testament, and was under no undue influence.

After the will was drawn A carefully read it and pronounced it all right, then properly signed it, remarking to the attorney, "This is my last will and testament." Two servant girls of the house were then sent for and told that they were wanted in A's room to witness his will. On their arrival A said to them, "Girls, I wish you would oblige me by signing that document as witnesses, you will see that I have signed it," pointing to the will then lying on a table. Thereupon the girls properly signed their names under the attestation clause as witnesses, as directed by the attorney, and left the room without anything further being said or done by anybody, while they were in the room.

A died the same day, and the will was offered for probate. Objection is made on the sole ground that the will was not properly executed. How did the surrogate decide? State your reasons.

540.

15. A drew his own will. It was properly executed and entitled to probate, but it named no person as executor. What can be done under the circumstances to carry out the terms of the will?

541.

16. A's time to appeal from a judgment recovered against him by default in the Supreme Court had duly expired. The sheriff is in possession of A's property and is about to sell it under an execution issued on the judgment. A has ample proof that the judgment was procured by the perjured testimony of witnesses on the inquest. He consults you as to the right of the Court, under the circumstances, to stay the sheriff pending the trial of an action which he wishes you, as his attorney, to commence to set aside the judgment for the causes above stated. What would you advise, and why?

542.

17. A, having two estates, mortgaged the both of them to B in one mortgage. He then mortgages one of them to C. B commences an action to foreclose his mortgage C a party defendant. What can C do, under the circumstances, to protect his mortgage?

543.

18. A, the general agent of the X Corporation, being thereunto duly authorized, entered into a written contract for and on behalf of the corporation for the purchase of merchandise, which contract recited that the X Corporation was party of the first part and B was party of the second part. The contract was signed as follows:

"A, Gen. Agt. for X Corporation,"

"B."

Question arises as to the validity of the execution of the contract and as to whether the corporation or the agent is liable thereon. What do you say, and why?

544.

19. The X Manufacturing Corporation sold a bill of goods to A, for which he was indebted thereto in the sum of \$1,000. The corporation sued him therefor. The attorney of A discovered that the corporation was not legally formed, and has pleaded it as a defense in A's answer to the complaint in the action. What would you say as to the validity of A's defense? Give your reasons for your answer.

545.

20. A and B were husband and wife living together. They could not agree nor live together in harmony, so they signed a writing in and by which they agreed to live separate and apart thereafter, the wife to receive a weekly allowance sufficient for her support; and they thereupon separated. The husband defaulted in his payments and his wife has sued him on the contract for the amount due to her thereon.

The husband consults you as to his liability on the contract. What do you say, and why?

546.

21. On December 1, 1908, A and B desired to become man and wife and to be lawfully married without the intervention of a clergyman or of a duly authorized magistrate or public officer. Can it be done? If so, how so; if not, why not?

547.

22. You were retained by X to bring an action in ejectment against Y. In the course of your employment you are told necessary facts by X concerning his title to the lands in question and to other lands then in his possession, all of which were more or less involved in the action. You conduct the suit to a successful issue, are paid for your services and discharged.

Subsequently, when the relation of lawyer and client no longer exists between you and X, A seeks to retain you to bring ejectment against X for certain other lands. The information you obtained in the ejectment action against Y, which is unknown to A, is material to A's cause of action and, if used, will enable you to win for him, otherwise not. Should you use the information so obtained? State your reason for your answer. (Legal Ethics.)

548.

23. There is an action pending in the Supreme Court. You are the attorney for the defendant. You meet the plaintiff at a social gathering and he opens up the subject of the action and then and there seeks to negotiate a compromise. What should you do, under the circumstances, his attorney not being present, and why? (Legal Ethics.)

549.

24. The Legislature passed a bill and presented it to the Governor on January 15th. It was overlooked in the Governor's office until January 30th, on which day it was vetoed by the Governor, who at once returned it to the House in which it originated, with his objections, the Legislature still

being in session and intending so to remain for three months longer.

Question arises as to the validity of the veto. What do you say, and why?

550.

25. An honorably discharged soldier from the army of the United States in the late Civil War applied to a State officer for an appointment in the civil service of the State. The office was in the competitive class under the civil service statute, but the veteran was not on any civil service list, nor had he been examined as to his merit and fitness. The State officer appointed him. Question arises as to the validity of the appointment. What do you say, and why?

QUESTIONS ON THE CODE OF CIVIL PROCEDURE.

NOTE.— We have been requested by quite a few to prepare and publish, in connection with the questions on Substantive law which we offer, some sort of an aid or guide in the onerous task of studying the New York Code of Civil Procedure. The New York practise code is a formidable document, yet so essentially a fact that no bar examination as a test of an applicant's ability to practise law can overlook it nor do other than to insist upon a fair and reasonable knowledge of its requirements. There is no royal road to its mastery. It must be studied and conned and committed to memory, and fortunate is he who can conquer it. Quiz books on the Code are a snare and a delusion, if used as the primary source of information. If the Code itself be studied, and the Quiz, so called, be subsequently consulted to determine the extent of one's knowledge it may be helpful, but there is no way of learning the Code except by downright hard study of the book itself, which can be very much aided by practical clerkship work in a law office with a good general practice.

Some Code Quizzers boil a fifty-line section of the Code down to a resumé of five words or five lines; others give the entire practice in narrative form with references to the sections of the Code which are germane, and it may be that both of those methods are most excellent. To my mind, however, the Code is a book wherein the words as used and their context and their cross references are of definite and required value, and all necessary to its understanding and that the proper way to study the Code is to study it as it is written. We have neither boiled down the sections nor given the practice in narrative form. We believe in pleading according to the language of the statute and have therefore given some of the essential sections of the Code which we have printed in their actual form, trusting that better results thereby will be obtained by the student.

We have necessarily omitted much, for the Code contains over three thousand sections and it cannot be properly digested or abridged for the purpose of its study. All that anyone can hope to accomplish is to have a fair working knowledge of its essentials, for if such are known, a reference to the book itself will point out the details of the procedure and the limitations thereon, if any. The Code contains much that the average practitioner will never be called upon to know or use.

The hundred direct Code questions which we give here, when studied in conjunction with the sixty-six others hereinbefore published, and with the Code itself, will be found amply sufficient to give the student a practical knowledge of many of the essentials of pleading and practise and information as to those parts of the Code which it is necessary for him to study and know. More than that we cannot do.

551.

Name the Courts of Record in the State of New York.

552.

State the general jurisdiction of the Supreme Court.

553.

State the general jurisdiction in civil actions of a County Court.

554.

State the power possessed by a County Judge to perform the duties of Justices of the Supreme Court at Chambers.

555.

State to what Appellate Court are appeals from judgments rendered by a Justice of the Peace in civil actions taken.

556.

State the general jurisdiction of the Surrogate's Court.

557.

State the various subdivisions of the Supreme Court.

558.

What is a special term and state its general jurisdiction?

559.

What is a trial term and state its general jurisdiction?

560.

What is the Appellate Division of the Supreme Court and state its general jurisdiction?

561.

State the general jurisdiction of the Court of Appeals in civil actions.

562.

State the object and intent of the Statute of Limitations.

563.

State the limitations in actions to recover real property brought by the people of the State of New York.

564.

In similar actions when maintained by a party other than the people?

565.

State generally the limitation in an action on a judgment.

566.

What actions must be commenced within twenty years after the cause of action has accrued?

567.

Within six years.

568.

Within three years.

569.

Within two years.

570.

Within one year.

571.

On a current account.

572.

In actions for penalties.

573.

In actions not specifically provided for.

574.

How must an acknowledgment or new promise be made to take a case out of the operation of the Statute of Limitations?

575.

What are the exceptions as to persons under disability?

576.

When is an action deemed to be commenced to stop the running of the Statute of Limitations?

577.

In what manner does an attempt to commence an action in a Court of Record effect the Statute of Limitations?

578.

State the mode of computing periods of limitations.

579.

When and how is a civil action commenced?

580.

Draw a summons in an action in the Supreme Court.

581.

Is it necessary to serve a copy of the complaint with the summons; consequences of failure?

582.

State cases where such service must be made.

583.

How must defendant's appearance be made?

584.

State the effect of the voluntary appearance of the defendant.

585.

How must personal service of a summons be made upon a natural person?

586.

How must personal service of a summons be made upon a domestic corporation?

587.

How must personal service of a summons be made upon a foreign corporation?

588.

State the cases in which the service of a summons may be directed by order upon a defendant without the State or by publication.

589.

Who may be joined as plaintiffs in an action?

590.

Who may be joined as defendants in an action?

591.

State generally a necessary step to be taken in all actions where there are infant plaintiffs and defendants.

592.

What must a complaint contain?

593.

What causes of action may be joined in the same complaint?

594.

When may a defendant demur to a complaint?

595.

In what cases must the defendant's demurrer specify the grounds of objection?

596.

When may the objection be taken by answer?

597.

When is the objection deemed waived?

598.

What must an answer contain?

599.

Define a counterclaim.

600.

When is a reply a necessary pleading and what must it contain?

601.

In case plaintiff fails to reply or demur to the counterclaim, what may the defendant do?

602.

What is the effect if a material allegation of the complaint is not denied.

603.

When must a pleading be verified and when may a verification be omitted?

604.

State how and by whom an affidavit of verification must be made.

605.

State generally the form of an affidavit of verification.

606.

How would you plead an account; also procure a bill of particulars of the claim of your adversary?

607.

If your adversary's pleading be frivolous, how would you dispose of it?

608.

How are sham answers or defenses disposed of?

609.

When may a pleading be amended as matter of right?

610.

What is a supplemental pleading and when may it be served?

611.

State the practice in case a pleading contains irrelevant, redundant or scandalous matter?

612.

When may a controversy be submitted for decision without process?

613.

State when a defendant may be arrested in an action when the right to arrest depends on the nature of the action.

614.

When may a woman be arrested in an action?

615.

State when an injunction may be granted in an action.

616.

What restrictions are there upon injunctions to restrain State officers?

617.

State in what actions a warrant of attachment may be granted.

618.

What must be shown to procure a warrant of attachment?

619.

Warrant in action against public officers, etc., for speculation will be issued when?

620.

In what cases may a receiver be appointed?

621.

When and how may a defendant make tender after suit?

622.

When does an action not abate?

623.

Define an order.

624.

Define a motion.

625.

How much time must be given on a notice of motion for an order?

626.

What is the time limitation where the attorneys for the respective parties reside or have their offices in the same city or village?

627.

In what cases may an order of interpleader be granted?

628.

Define an issue.

629.

When does an issue of law and an issue of fact arise?

630.

When may the Court change the place of trial of an action?

631.

State the method by which an action is brought to trial.

632.

How many jurors may a party peremptorily challenge in a civil action?

633.

If a trial by jury be waived how must an action be tried?

634.

How and when is a motion made for a new trial upon the judge's minutes?

635.

In certain actions on contracts how may judgment be taken by default.

636.

When is application to court for judgment by default necessary.

637.

How may a judgment by confession be entered without action?

638.

How is judgment entered against defendants jointly indebted when all are not served.

639.

When may a judgment be enforced by execution?

640.

Name the different kinds of execution.

641.

Within what time must an appeal be taken to the Court of Appeals?

642.

Is security necessary to perfect the appeal?

643.

Within what time must an appeal be taken to the Appellate Division of the Supreme Court?

644.

Is security necessary to perfect the appeal?

645.

State the contents of an affidavit to be delivered to the sheriff requiring him to replevy a chattel before commencement of action?

646.

Enumerate the State writs.

647.

Who is entitled to prosecute the writ of habeas corpus and the writ of certiorari to inquire into the cause of detention?

648.

Define a writ of mandamus and state the kinds thereof.

649.

State the purposes of writs of prohibition, the kinds of writs of prohibition and when they may be issued.

650.

Define a writ of certiorari and state in what cases it may and may not issue.

ANSWERS.

1.

ALBANY COUNTY COURT.

JOHN DOE, Plaintiff.

against

RICHARD ROE, Defendant.

The plaintiff complains of the defendant in the above-entitled action, and alleges:

I. That the above-named defendant is a resident of the county of Albany.

II. That on the day of, 190., at the city of Albany, N. Y., the said defendant assaulted and beat the above-named plaintiff to his damage in the sum of \$2,000, for which sum he demands judgment against said defendant, with costs.

X Y,

Attorney for Plaintiff,
Office and Post-office Address,

Albany, N. Y.

Section 340, Code of Civil Procedure.

2.

Judgment for plaintiff. A wins. Title not in issue.

“In an action of trespass on real estate the general rule is that possession thereof by plaintiff is sufficient to maintain the action against the wrongdoer, and that a general denial contained in the answer is not sufficient to put the plaintiff's title in issue.”

Hill v. Water Comrs., 77 Hun, 492, at
494, 495.

[200]

2.

Both. Both won; each party had recovered, and was entitled to costs as against the other.

Code Civil Procedure, sec. 3234.

Browning v. N. Y., L. E. & W. R. R. Co.,
64 Hun, 513.

4.

B only. Judgment could not be rendered against C for the reason that no such judgment was prayed for in the complaint.

Bradley v. Shafer, 64 Hun, 428.

5.

(1) Draw summons and complaint and have latter verified.

(2) File notice of pendency of action in clerk's office of county where the mortgaged property is situated. (Code, sec. 1631.)

(3) File complaint in clerk's office of county where venue is laid.

(4) Serve summons and complaint on defendants.

(5) When time to answer has expired, none of the defendants appearing or answering or being infants or absentees, apply to Special Term upon an affidavit of regularity for an order of reference to compute the amount due to the plaintiff, and on such report apply to the court for judgment of foreclosure and sale.

Supreme Court Rules 60, 61.

6.

By procuring a writ of *habeas corpus* to bring up a person to testify.

Code Civil Procedure sec. 1991; secs.
2008 to 2014.

Vide 183 N. Y. 475.

7.

A's contention is correct.

B had originally a right of way of necessity over the lands

of A. It was not, however, a perpetual right of way; it continued only so long as the necessity existed, and when he obtained access to the highway across his own lands his right over A's land ceased. B must now cross his own land.

Palmer v. Palmer, 150 N. Y. 146, 147.

8.

That which was annexed to the land was real property and went to B, viz., the thirty acres of uncut hay and the posts distributed along the fences; the remainder, to wit: the fifty cords of wood, corded in the woods, and the twenty acres of hay which had been cut, being personal property (not annexed to the land) belonged to A.

Matter of Chamberlain, 140 N. Y. 390.

Bank v. Crary, 1 Barb. 542.

Warren v. Leland, 2 Barb. 619.

Bradner v. Faulkner, 34 N. Y. 347.

8 Am. & Eng. Encyc. of Law (2d ed.),
p. 302.

Stall v. Wilbur, 77 N. Y. 158.

9.

A and his wife C did not become tenants by the entireties under the circumstances.

Gerard on Titles to Real Estate (5th ed.),
pp. 81, 322.

Bertles v. Nunan, 92 N. Y. 152.

Zornlein v. Bram, 100 N. Y. 15.

When A died, C, his wife, owned her own half; the child owned the other half subject to its mother's dower.

Sec. 190, Real Property Law (chap. 52,
Laws 1909).

Decedent Estate Law (Laws 1909, chap.
18), sec. 81.

10.

That the debt was barred by the six years' statute of limitations (Code Civil Procedure, sec. 382), and was not revived by the oral declaration and promise to pay (Id., sec. 395).

11.

A has no remedy. A promise by one party to do that which he is already under a legal obligation to perform is insufficient as a consideration to support a contract.

Carpenter v. Taylor, 164 N. Y. 177.

12.

A liable for \$40,000 only. This being a limited partnership under the statute (chap. 44, Laws 1909), A, the special partner, is not liable for the debts of the partnership beyond the fund contributed by him to the capital of the partnership, to wit, \$40,000. B, the general partner, is liable as such for the entire debt, viz., \$100,000 (Id., secs. 4, 6, 7, 36).

13.

B, the survivor had the legal title to the assets; he held them as the legal owner, and not as trustee, except that in equity he would be regarded to some extent as a trustee; his duty was to pay the debts and dispose of the assets of the partnership for the benefit of himself and the estate of the deceased partner.

Russell v. McCall, 141 N. Y. 447.

Kastner v. Kastner, 53 App. Div. 293.

14.

Judgment for A. The instrument is not a promissory note, it not being certain that John Doe will ever become twenty-one years old; hence A's neglect to present the same for payment, its nonprotest and failure to give him notice did not discharge Roe, the maker.

Rice v. Rice, 43 App. Div. 458.

15.

Judgment for C for \$1,000. While there was a material alteration, C was a holder in due course and not a party to the alteration; he may enforce payment thereof according to its original tenor.

Negotiable Instruments Law (chap. 43, Laws 1909), secs. 205, 206.

Eaton & Gilbert on Com. Paper, pp. 556, 561, 678; *vide*, 194 N. Y. 461.

16.

X has no claim against the wife. "The marital relation creates, in itself, no presumption that the husband was agent for his wife, and proof of his appointment as such, or of her ratification, is necessary to bind her on contracts made by him in regard to repairing her real estate."

Aarons v. Klein, 29 Misc. 639.

17.

X, the agent, is personally liable.

An agent is personally liable upon a contract made for a principal not named by him, although he states to the contractor that he is not the owner of the premises where the work is to be done, but is merely the agent for the owner. Carpenter had option to sue either.

Nichols v. Weil, 30 Misc. 441.

Y was not called upon to inquire, it was X's duty to disclose his principal.

"A person, even though making an agreement for another, makes himself personally liable thereon if he contracts in his own name, without disclosing his principal, although the other party to the contract may suppose that he is acting as agent."

DeRemer v. Brown, 165 N. Y. 419.

Y was entitled to actual knowledge of the name of X's principal.

Cobb v. Knapp, 71 N. Y. 348.

18.

A, the surety, is not discharged.

"Mere indulgence by a creditor of the principal debtor will not discharge the surety. There must be an agreement for an extension made without the consent of the surety, upon a valid consideration, which ties the hands of the creditor and precludes him meanwhile from proceeding to collect the debt against the principal, thereby changing the position of the surety." None of those elements exist in the problem given.

Fifth National Bank v. Woolsey, 21 Misc. 761, 762.

19.

B cannot recover. C's obligation as surety was *strictissimi juris*, and he is discharged by any alteration of the contract to which his guaranty applied, whether material or not, and the courts will not inquire whether it is or is not to his injury.

Page v. Krekey, 137 N. Y. 314.

Tradesmans' National Bank v. National Surety Co., 169 N. Y. 567.

20.

A can recover. He has an insurable interest in B's building. "A legal or equitable title is not necessary to give an insurable interest in property; if one has a right which may be enforced against the property, and which is so connected with it that injury thereto will necessarily result in a loss to him, he has an insurable interest."

Rohrbach v. Germania Fire Ins. Co., 62 N. Y. 47.

Riggs v. C. M. Ins. Co., 125 N. Y. 14.

21.

Yes. A can recover.

"Where a creditor procures an insurance upon the life of his debtor, his insurable interest continues, although the statute of limitations would have barred his action, if pleaded, before the debtor's death. A contract for life insurance is not one for indemnity merely, and if the insured had an interest in the duration of the life when he took the policy, he may recover, though that interest has ceased."

Rawls v. Am. Mut. Life Ins. Co., 27 N. Y. 282.

Richards on Insurance, sec. 27.

22.

No; owner cannot recover. The picture perished without any fault of the hirer so that redelivery became impossible; the Art Association is excused.

Young v. Leary, 135 N. Y. 576.

23

The attachment should be vacated as to the horse-feed. The transaction was a bailment, not a sale, and title thereto was in the farmer.

Sattler v. Hallock, 160 N. Y. 291.

24

Yes. The warranty being express, survived acceptance.

Fairbanks Canning Co. v. Metzger, 118 N. Y. 260.

Hooper v. Story, 155 N. Y. 171.

Zabriskie v. C.V. R. R. Co., 131 N. Y. 72.

The measure of damages would be the difference between the value of the goods if they had corresponded with the warranty and their actual value.

Isaacs v. Wanamaker, 189 N. Y. 122.

Hooper v. Story, 155 N. Y. 171, and cases cited.

Miller v. Patch Mfg. Co., 101 App. Div. 24.

Vendee is also entitled to the benefit of his bargain in obtaining the goods at a price below their real value. "Gains prevented as well as losses sustained are proper elements of damage."

Beeman v. Banta, 118 N. Y. 538.

Bruce v. Fiss et al., 47 App. Div. 273, and cases cited.

25

The action will be in fraud. The damages will be the value of the sheep which died and the diminished value of the sheep infected by the disease which did not die.

Jeffrey v. Bigelow, 13 Wend. 518.

26

The Court should exclude the evidence.

The declarations of the motorman one hour after the accident, with respect to the cause and circumstances of the accident, were not binding upon the defendant, and are inadmissible against it, where they do not tend to contradict or impeach the motorman in anything to which he testified as a witness for the defendant.

Kay v. Met. St. Ry. Co., 163 N. Y. 447.

27.

The judgment should be reversed.

The negligence of the defendant in other cases did not justify a recovery by the plaintiff; the evidence was clearly improper.

Lichtenstein v. Jarvis, 31 App. Div. 36,
37.

28.

Yes, the exception was well taken.

A witness can only be impeached by evidence of general character; evidence of particular reports or of specific offenses is inadmissible except as brought out on cross-examination, as showing foundation of bad character.

Abbott's Trial Evidence (1st ed.), p. 674.

In this case the witness denied the theft; it being collateral matter not involved in the issue, the party who called it out was bound by it and could not contradict it.

Vide cases cited, Vol. 13, Abb. Cyc. Dig.,
p. 938, par. 4; also question 33 *infra* and
answer.

29.

Yes. A was a witness to the will.

"The opinion of a witness, not an expert, as to the mental condition of another, is not competent, save in the case of a subscribing witness to a will, although based on what the witness himself saw or heard."

Holcomb v. Holcomb, 95 N. Y. 316.

Clapp v. Fullerton, 34 N. Y. 190.

30.

Yes.

Upon the trial of an action for a breach of promise of marriage, evidence of defendant's general reputation, as to wealth, is competent upon the question of damages.

Chellis v. Chapman, 125 N. Y. 214.

Kniffen v. McConnell, 30 N. Y. 285.

31.

Guilty of the crime of an attempt to commit arson. A with felonious intent to commit the crime of arson did an act tending to effect its commission; his failure to complete it made him guilty of an attempt.

Penal Law (Laws 1909, chap. 88), secs. 223, 583.

5 Park. Crim. Rep. 102.

James McDermott v. People, 5 Park. Crim. Rep. 102.

32.

Not guilty. A's marriage to C while B was living was bigamous and void. When B died, he had no lawful wife living, hence his marriage to D was valid.

Penal Law (Laws 1909, chap. 88), sec. 340.

33.

No. A witness can only be impeached by evidence of general character; evidence of specific offenses is inadmissible.

Abbott's Trial Evidence (1st ed.), p. 674.

Doe was indicted for assault upon A; it was not material to the issue that at another time and place he feloniously broke into the house of B, so that the prosecution was not only bound by the answer, but the evidence was also inadmissible for the reason that it tended to prove the commission of another crime, which had no possible relevancy to the issue.

People v. Van Tassell, 156 N. Y. 561.

People v. Molineaux, 168 N. Y. 543.

People v. Place, 157 N. Y. 585, 598.

Vide question 28 and answer, *supra*.

34.

Yes, not on the note, however, but in fraud for the fraudulent concealment of a material fact.

Brown v. Montgomery, 20 N. Y. 287.

Rothmiller v. Stein, 143 N. Y. 593.

35.

Judgment for the master.

"In order to charge a master with liability to one servant, for the acts of an alleged incompetent fellow servant, the proper course is to show specific acts of incompetency on the part of the servant, and that the master knew, or should have known, of such incompetency." The problem given does not show the latter fact.

McCarthy v. Ritch, 59 App. Div. 145.

36.

A can sue B in conversion or he can waive the tort and sue in contract for the value of the rye.

"Where one of several tenants in common of a farm (all being of full age) occupies it with the acquiescence of his cotenants, and, in the usual course of husbandry, takes the annual products thereof, without having entered into any contract in respect to its use and without having ousted, or denied the right of, any of his cotenants, he is not liable to account to them for its use, or for the products so taken."

Le Baron v. Babcock, 122 N. Y. 153.

Felts v. Collins, 46 App. Div. 334.

Ferris v. Nelson, 60 App. Div. 430.

Terry v. Munger, 121 N. Y. 161.

37.

The will was properly executed.

(a) It was not necessary for the testator to sign in the presence of both the witnesses at the same time, nor for the witnesses to be both present when the testator published and acknowledged the same.

Willis v. Mott, 36 N. Y. 486.

Baskin v. Baskin, 36 N. Y. 416.

Hoysradt v. Kingman, 22 N. Y. 372.

(b) An attestation clause is not necessary.

Redfield's Law & Practice, Surrogates' Courts (6th ed.), pp. 157, 158, sec. 203.

Matter of Crane, 68 App. Div. 355.

Matter of Cornell, 89 App. Div. 412.

(c) It is not necessary for the witnesses to give their respective places of residence.

Id., pp. 154-155, sec. 200.

Dodge v. Cornelius, 168 N. Y. 244.

Matter of Phillips, 98 N. Y. 267.

38.

The estate, being all personal, goes to the husband by virtue of his marital right, the wife dying intestate and without descendants.

Matter of Thomas, 33 Misc. 730.

100 N. Y. 333; 114 A. D. 407; 159 N. Y. 133.

39.

Valid, except that the surplus income accumulated during John's infancy belongs to him when he arrives at the age of twenty-one years and should be paid to him then.

Pray v. Hagaman, 92 N. Y. 508.

Hascall v. King, 162 N. Y. 138.

40.

The Court will decree that the owner reimburse A, the occupant, for his expenditures.

He who seeks equity must do equity.

Thomas v. Evans, 105 N. Y. 601.

41.

Yes. He has an action in equity to enforce a resulting trust and is entitled to the proceeds of the policy to the amount of his debt.

Holmes v. Gilman, 138 N. Y. 369.

Matter of Hicks, 170 N. Y. 198, 200, 201.

42.

A loses his horse. He is estopped from asserting his title.

"An estoppel may arise from silence, as well as words; but this is only where there is a duty to speak, and the party upon whom the duty rests has an opportunity to speak, and, knowing the circumstances requiring him to speak, keeps silent; or, in other words, where his silence amounts to a fraud, actual or constructive."

Vol. XI, Encyc. of Law (2d ed.), pp. 427, 428, 429.

43.

A wins.

Bank cannot recover. A is the absolute owner of the stock; the contract is *ultra vires* and purely executory.

Nassau Bank v. Jones, 95 N. Y. 115.

44.

The consolidated corporation is liable for the debts of each of the constituent companies, but the equitable lien which the creditors of the X Railroad Company has on the property of their solvent debtor, preserves its validity and priority as against the other creditors.

Prouty v. Lake S. & Mich. S. R. Co., 52 N. Y. 363.

Boardman v. L. S. & M. S. R. R. Co., 84 N. Y. 181.

Copp v. C. C. & I. Co., 29 Misc. 110.

45.

No. A holds the real estate, having purchased in good faith and for value.

Cole v. M. I. Co., 133 N. Y. 168.

46.

A can be compelled to support his wife, his minor son, and his paternal and maternal grandparents, by the Overseer

or Superintendent of the Poor or Commissioner of Charities.

Ex parte Hunt, 5 Cow. 284.
Code Crim. Pro., secs. 914-926.

47.

The marriage is valid and the child is legitimate. The second marriage is voidable, but only void from the time its nullity is declared by a court of competent jurisdiction. Bring an action to annul the second marriage.

Domestic Relations Law (chap. 19, Laws 1909), secs. 6, 7.

Code Civil Procedure, secs. 1742-1755.

Code Crim. Procedure, sec. 838.

Price v. Price, 124 N. Y. 589.

48.

No, A cannot recover; he should have obtained an order of the Court authorizing the expenditure.

Hassard v. Rowe, 11 Barb. 22.

49.

The lease is valid. The provision of the Constitution of the State of New York (art. I, sec. 13) prohibiting the leasing or granting of agricultural lands for a longer period than twelve years, is not violated by a lease for mining purposes such as is set forth in the question.

Massachusetts Nat. Bank v. Shinn, 163 N. Y. 360.

50.

The act is unconstitutional and void.

(a) It is a private or local bill and embraces more than one subject. Const. of N. Y., art. III, sec. 16.

(b) It is a private or local bill discontinuing a highway. Id., art. III, sec. 18.

(c) It is a bill allowing a private claim or account against the state. Id., art. III, sec. 19.

51.

SUPREME COURT, NEW YORK COUNTY.

JOHN DOE, Plaintiff,

against

RICHARD ROE, Defendant.

The plaintiff complains of the above-named defendant and alleges:

That heretofore the defendant made his promissory note in writing, dated on the day of, 190., at New York city, and thereby promised to pay to the plaintiff or his order one hundred dollars, three months after said date. That no part of said note has been paid.

Wherefore plaintiff demands judgment against said defendant for one hundred dollars with interest thereon from the day of, besides the costs of this action.

X Y Z,

Plaintiff's Attorney.

Office and Post-office Address,

_____, Albany, N. Y.

52.

"The affidavit, to be delivered to the Sheriff, as prescribed in the last section, must particularly describe the chattel to be replevied, and must contain the following allegations:

1. That the plaintiff is the owner of the chattel, or is entitled to the possession thereof, by virtue of a special property therein; the facts with respect to which must be set forth.

2. That it is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof, according to the best knowledge, information and belief of the person making the affidavit.

4. That it has not been taken by virtue of a warrant, against the plaintiff, for the collection of a tax, assessment or fine, issued in pursuance of a statute of the State, or of the United States; or, if it has been taken under color of such

a warrant, either that the taking was unlawful, by reason of defects in the process, or other causes specified, or that the detention is unlawful, by reason of facts specified, which have subsequently occurred.

5. That it has not been seized by virtue of an execution or warrant of attachment, against the property of the plaintiff or of any person from or through whom the plaintiff has derived title to the chattel, since the seizure thereof; or, if it has been so seized, that it was exempt from the seizure, by reason of facts specified, or that its detention is unlawful, by reason of facts specified which have subsequently occurred."

Sec. 1695, Code of Civil Procedure.

"Where the affidavit describes two or more chattels of the same kind, it must state the number thereof, and where it describes a chattel in bulk, it must state the weight, measurement, or other quantity. Where it describes two or more chattels to be replevied, it may, at the election of the plaintiff, state the aggregate value of all; or, separately, the value of any chattel or of any class of chattels, and the aggregate value of the remainder, if any. Where it states separately the value of one or more chattels or classes of chattels, the defendant may require, as prescribed in the following provisions of this article, the return of any or all of the chattels or classes of chattels, the value of which is thus stated, or of the portion thereof which has been replevied. If he procures such a return, the remainder must be delivered to the plaintiff, except as is otherwise prescribed in this article."

Sec. 1697, Code Civ. Proc.

53.

The Court denied defendant's motion.

"If the defendant, in an action for breach of a contract within the statute (of frauds), desires to avail himself of the benefit of the statute, he must plead it. If the defect appears on the face of the complaint, the defense must be interposed by demurrer (Code Civ. Proc., sec. 488); if it does not so appear, it must be presented by answer. If the objection is

not taken either way, defendant will be deemed to have waived it."

Crane v. Powell, 139 N. Y. 379.

C. R. Parmele Co. v. Haas, 171 N. Y. 583.

Barrett v. Johnson, 77 Hun, 527.

54.

By an order requiring him to produce or by a subpoena *duces tecum*. The subpoena must be served at least five days before the day when he is required to attend.

Code Civ. Proc., sec. 867.

55.

The appellate tribunal should reverse the decision of the trial court. The answer having admitted plaintiff's cause of action, he was not required to give any evidence to be entitled to a verdict, and hence he did not have the right to begin by opening the case to the jury and adducing his evidence first. The right to open and close is a substantial one, and it is error to refuse it to the one entitled, who, in the case given, was the defendant.

Vide Abbott's Trial Brief (Civil Jury Trials), pp. 30, 38, and cases cited.

56.

Plaintiff is entitled to issue an execution, of course, at any time within five years after the entry of judgment, and if he issued one during that time he can issue another, of course, in 1903, provided the ones already issued have been returned wholly or partly unsatisfied or unexecuted. If he did not within the five years from the entry of judgment issue an execution, as aforesaid, he cannot issue an execution without an order of the Court granting leave to issue the same.

Code Civ. Proc., secs. 1375, 1377, 1378.

57.

Advise your client to put his mortgage on record and then start an action in equity to have it declared a lien prior to

A's deed. The latter, because of his having purchased for an antecedent debt, is not a purchaser for a valuable consideration, as required by the Real Property Law.

Real Property Law (chap. 52, Laws 1909), secs. 290, 291.

Vide numerous cases cited, Logan's Real Property Law, p. 87.

De Lancey v. Stearns, 66 N. Y. 157.

Howells v. Hettrick, 160 N. Y. 308.

58.

Advise the tenant that the engine is a trade fixture, and that as he can remove it without injury to the premises, and intends to replace the old engine where he found it, he is at liberty to do so, within his term, notwithstanding the landlord's objection. It is his property and not the landlord's.

Andrews v. D. B. Co., 132 N. Y. 353.

59.

The inheritance shall descend to them in equal parts, each one-quarter, for they are all of equal degree of consanguinity to their grandfather from whom it came. |

Real Property Law (chap. 52, Laws 1909), sec. 282.

Decedent Estate Law (chap. 18, Laws 1909), secs. 81, 82.

60.

A. wins. B volunteered and paid the debt without A's privity or consent; the moral obligation of A to reimburse him was not a sufficient consideration to uphold his promise to do so.

Vide, generally, 9 Cyc. Law & Proc., pp. 316, 356.

Bartholomew v. Jackson, 20 Johns. 28.

61.

Y is not liable. The contract is void as a wagering contract.

Kingsbury v. Kirwan, 77 N. Y. 612.

Embery v. Jemison, 131 U. S. 336.

62.

A cannot recover.

He knew that X was a miller and he sold and shipped to him the lumber individually and took his note therefor. He took partnership security from one of the partners for what he knew at the time to be the particular debt of the partner who gave it, and he cannot recover thereon, especially where the transaction (the buying of lumber) is not within the scope of the milling business to which the partnership was specially limited.

Livingston v. Roosevelt, 4 Johns. 251,
252.

63.

B wins.

"After the dissolution of a partnership an acknowledgment and promise to pay, made by one of the partners, will not revive a debt against the firm which is barred by the statute of limitations."

Van Keuren v. Parmelee, 2 N. Y. 523.
Murdock v. Waterman, 145 N. Y. 63.
Conn. Trust Co. v. Wead, 33 Misc. 376.

64.

Yes. E has a cause of action against D. D, by his indorsement, warranted that the note was genuine and in all respects what it purported to be. The use of the words "without recourse" simply qualified his indorsement as to his financial responsibility but did not relieve him of his warranty as to the validity of the prior indorsements.

Nego. Inst. Law (chap 43, Laws 1909,
sec. 115.
Eaton & Gilbert on Com. Paper, sec. 85,
p. 418.
Daniel on Nego. Inst. (5th ed.), sec. 675.

65.

C can recover against A.

He derived his title through a holder in due course, and

instrument, he has all the rights of such former holder in not being a party to any fraud or illegality affecting the respect of all parties prior to the latter.

Nego. Inst. Law chap. 43, Laws 1909, sec. 97.

Eaton & Gilbert on Com. Paper, pp. 387, 388 (p. 346, 2d ed. n. 73).

Daniel on Nego. Inst. (5th ed.), secs. 803, 805.

4 Am. & Eng. Encyc. of Law (2d ed.), p. 308.

66.

Yes, C can recover.

A was an undisclosed principal, and C had the right to resort to him when he learned the facts.

1 Am. & Eng. Encyc. of Law (2d ed.), p. 1139.

67.

Yes. A can recover. B was acting within the scope of his authority and in the business of his principal when he gave to A the false information on which he relied to his damage.

City Nat. Bank of Birmingham v. Dun,
51 Fed. Rep. 160.

68.

Judgment for C.

A is estopped from denying B's capacity to contract.

Penfield v. Goodrich, 10 Hun, 43.

Kimball v. Newell, 7 Hill, 116.

69.

Both have good defenses.

The release of A discharged both B and D.

Robertson v. Smith, 18 Johns. 459.

King v. Baldwin, 2 Johns. Ch. 559.

173 N. Y. 465, 466.

Debtor and Creditor Law (chap. 17,
Laws 1909), secs. 230, 231.

70.

To the first wife. Her interest was fixed at the time the policy was issued.

Steinback v. Diepenbrock, 158 N. Y. 30.

Conn. Mut. v. Schaefer, 94 U. S. 457.

Goldsmith v. Union M. L., 15 Abb. N. O. 409.

71.

Judgment for B.

The policy was not void for breach of condition, the knowledge of the agent was the knowledge of the defendant insurance company.

Van Schoick v. Niagara F. Ins. Co., 63 N. Y. 434.

Contra (in U. S. courts), Northern Ass. Co. v. Grand View Building Assoc., 183 U. S. 308.

72.

The hostler was negligent and caused the injury; he is liable, so is the landlord.

B is also responsible, he made the hostler his agent or servant, and is liable for his negligence under the circumstances.

Hall v. Warner, 60 Barb. 198.

73.

A and B were bailor and bailee, and the transaction was a bailment.

When B, the boarding-stable keeper, hitched one of the horses to drive on his own business without A's knowledge or consent, his liability for injury to the horse, while so driving, was absolute and not dependent upon his want of care. He is liable for the value of the horse killed while out driving.

5 Cyc. Law & Proc., title "Bailment," pp. 176, 177, 178.

The bailment was for "mutual benefit," and the boarding-stable keeper is held to the exercise of ordinary care in rela-

tion to the subject-matter and is responsible only for ordinary negligence, while not going beyond his trust, which, under the circumstances narrated, is that care which a man of ordinary prudence and discretion would use in reference to the particular thing, were it his own property, or in doing the particular thing were it his own concern. (Id., pp. 182, 183, 184.) The fire which destroyed A's horses occurred without B's fault or negligence, and killed his own as well as A's, hence he is not liable to A for the value of the burned horse.

74.

The sale having been induced by fraud on the part of A, B could repudiate the transaction and reclaim and retake the goods from the possession of any one, except a transferee in good faith and for a valuable consideration paid at the time of the transfer.

A, having purchased the goods for an antecedent debt, was not a purchaser for a valuable consideration paid at the time of the transfer.

B can replevin or demand a return of the goods and on refusal sue in conversion or for their value.

Stevens v. Brennan, 79 N. Y. 254.

Button v. Rathbone, 126 N. Y. 192.

Terry v. Munger, 121 N. Y. 161.

75.

Judgment for A. The fact that the agent had no express authority to make the warranty is immaterial. Upon a sale by sample, of goods *in esse*, there is an implied warranty that the goods shall correspond with the sample.

Waring v. Mason, 18 Wend. 425.

Hargous v. Stone, 5 N. Y. 73.

Smith v. Coe, 170 N. Y. 171.

Gurney v. At. & G. W. R. Co., 58 N. Y. 364.

76.

The Court should admit the testimony.

"It was pertinent and not immaterial. The (Engineer's)

authority to act for the defendant in relation to the stone was in issue; it might be established by circumstances, and among others the recognition by the defendant of acts on his part similar to those in controversy."

Beattie v. D., L. & W. R. Co., 90 N. Y. 648.

77.

The Court should exclude the testimony, as being parol evidence to vary, contradict and alter a written agreement.

Johnson v. Oppenheim, 55 N. Y. 293.

78.

The Court should exclude the testimony.

Hearsay evidence on questions of pedigree is not admissible unless the party who made the declarations is dead. There was no proof offered that the father of B is dead.

Stephen's Dig. Law Ev. (Beers' N. Y. ed.), p. 157.

People v. Miller, 30 Misc. 355.

79.

"A husband or wife is not competent to testify against the other upon the trial of an action, or the hearing upon the merits of a special proceeding founded upon an allegation of adultery, except to prove the marriage or disprove the allegation of adultery."

Code Civ. Proc., sec. 831.

80.

The objection should be overruled.

The witness being competent and having personally inspected the bridge immediately after the accident, his knowledge was derived from his own observations and he may be asked his opinion directly upon the fact.

Abbott's Brief on Facts, p. 229.

81.

Murder in the first degree.

It is murder in the first degree to kill a human being when committed without a design to effect death, by a person engaged in the commission of, or in an attempt to commit a felony, either upon or affecting the person killed or otherwise.

Penal Law (chap. 88, Laws 1909), secs.
2, 400, 402, 1044.

People v. Cole, 2 N. Y. Crim. Rep. 108.

Fitzgerald v. People, 37 N. Y. 413.

People v. Flanagan, 174 N. Y. 356.

People v. Greenwall, 115 N. Y. 520.

82.

Yes. In all cases, other than felony, defendants jointly indicted may be tried separately or jointly in the discretion of the court.

Code Crim. Proc., sec. 391.

83.

O was guilty of petit larceny.

A committed a misdemeanor when he feloniously stole in the day time, as stated, an overcoat of the value of ten dollars. C, who thereafter aided A to escape from arrest, knowing at the time that he was liable to arrest, became a principal to the crime and could be indicted and punished as such.

Penal Law (Laws 1909, chap. 88), secs.
2, 27, 1298, 1299.

84.

Yes. Assault.

"The menace of violence with a dangerous weapon by a person within striking distance of the party menaced is an assault, although the person menaced is not actually struck, and damages may be recovered for such assault."

Liebstadter v. Federgreen, 80 Hun, 245.

85.

Upon A.

It was immaterial under the circumstances whether A's ox was known to be vicious or not, when it gored B's ox

through the fence, which separated the farms. The fence being proper, it committed a trespass for which A is liable.

Van Leuvin v. Lyke, 1 N. Y. 515.

Marsh v. Hand, 120 N. Y. 319.

86.

No.

"A person cannot place himself in a position of danger simply for the protection of his property * * * without being guilty of such negligence as will preclude a recovery for a personal injury in so doing."

Morris v. Railway Co., 148 N. Y. 182.

87.

C, D and E each take one-third or four thousand dollars. A's right of inheritance and succession from his natural parents remained unaffected by his adoption, but his parent D stood toward him in the legal relation of parent and child and inherited from him as such.

Dom. Rel. Law (chap. 19, Laws 1909),
sec. 114.

Code Civ. Proc., sec. 2732.

88.

The widow has her election and can claim dower in either estate, provided she evinces her election by the commencement of an action to recover her dower in the lands given in exchange within one year after the death of her husband, if not, she will be deemed to have elected to take her dower in the lands received in exchange.

Real Property Law (chap. 52, Laws
1909), sec. 191.

89.

Mary wins. The will was valid as a nuncupative will of a soldier in actual service, and *in extremis* dying on the field of

battle. Its execution and tenor can be established by at least two witnesses.

Prince v. Hazelton, 20 Johns. 502.
Ex parte Thompson, 4 Bradf. Surr. 154.
 Code Civ. Proc., sec. 2618.
 Redfield's Surr. Pr. (6th ed.), p. 201,
 sec. 240.
 Decedent Estate Law (chap. 18 Laws
 1909), sec. 16.
 Hubbard v. Hubbard, 8 N. Y. 199.

90.

Judgment for B. Equity will not interfere with a bad bargain, if there was no disability or fraud.

1 Story's Eq. Jurisp. (12th ed.), sec. 244.

91.

Yes. They can bring an action in equity to have the property purchased by A impressed with the original implied trust so as to hold the same for the benefit of the children including himself. The last piece of property A purchased with the proceeds of the sale of the house the mother deeded to him under their agreement, and it stands in the place thereof. The trust grows out of the facts, founded upon the confidential relation of mother and son, brothers and sisters.

Goldsmith v. Goldsmith, 145 N. Y. 313.
 Wood v. Rabie, 96 N. Y. 425.
 Ahrens v. Jones, 169 N. Y. 561.
 Hunt v. Hunt, 171 N. Y. 401.
 McClellan v. Grant, 83 App. Div. 603.

92.

C cannot get rid of the mortgage without paying or offering to pay the sum actually loaned. He is not a borrower within the meaning of the provisions of the usury law (sec. 4, chap. 430, Laws 1837), declaring such payment or offer to be unnecessary as a condition of granting relief to a borrower.

Buckingham v. Corning, 91 N. Y. 525.
 Hubbard v. Todd, 171 U. S. 474.

93.

The judgment is invalid. B, the president, well knowing the insolvency of the corporation, procured his wife to institute suit and to recover judgment; the judgment was procured or suffered through the actual agency of an officer of the company contrary to the provisions of section 66 of the Stock Corporation Law, chapter 61, Laws 1909.

Dickson v. Maye, 35 St. Rep. 482.

94.

The X Company is not liable. It is an *ultra vires* act for a corporation organized for the purpose of manufacturing beer and malt to become an accommodation surety for the payment of the rent of a house which one of its directors rented of A, and A was bound to know in that regard the limitations on the corporate powers.

Jemison v. C. S. Bank, 122 N. Y. 135.

10 Cyc. 1148 *et seq.*

Nat. Park Bank v. G. A. M. W. & S. Co.,
116 N. Y. 281.

[*Vide* as to its being surety on leases of saloons, Koehler v. Reinheimer, 26 App. Div. 1; Aaronson v. David Myer B. Co., 26 Misc. 655; *Idem*, on appeal, 29 Misc. 289; Holin v. Claus, 21 App. Div. 204; 66 A. D. 522.

95.

The directors of a stock corporation shall not make dividends except from the surplus profits arising from the business of such corporation. Each of the directors who voted to borrow \$50,000 on the notes of the corporation is jointly and severally liable to such corporation and to the creditors thereof to the full amount of any loss sustained by such corporation or creditors respectively by reason of such act. The two directors who dissented are not liable, provided they caused

their dissent to be entered at large upon the minutes of such directors at the time or were not present when it happened.

The Stock Corporation Law (chap. 61,
Laws 1909), sec. 28.

96.

To the wife, \$5,000; to the creditors, \$2,500.

A married woman to whom a policy on the life of her husband is made payable, when she survives, is entitled to receive the insurance money payable by the terms of the policy as her separate property, and free from any claim of a creditor or representative of her husband, except that where the premiums actually paid annually out of the husband's property exceed \$500, that portion of the insurance money which is purchased by excess of premiums above \$500, is primarily liable for the husband's debts.

Dom. Rel. Law (Laws 1909, chap. 19),
sec. 52.

97.

The marriage of B and C legitimatized A, and he became entitled to all the rights and privileges of a legitimate child.

Dom. Rel. Law (Laws 1909, chap. 19),
sec. 24.

The real estate descended to A subject to his mother's dower. Decedent Estate Law (chap. 18, Laws 1909), sec. 81.

The personal estate was distributed one-third to the mother and the balance to A. (Decedent Estate Law *supra*, sec. 98.)

X, the father of the deceased, took nothing.

98.

He has neither duty nor liability. The debt was contracted after the marriage. He is liable for his wife's debts contracted before marriage to the extent of the property of his wife which he acquired by antenuptial contract or otherwise.

Dom. Rel. Law (Laws 1909, chap. 19),
sec. 54.

99.

The act is unconstitutional. It is an unlawful interference with and abridgment of the liberty of the citizen in that it prevents him from engaging in the business of selling passage tickets on steamboats and railroad trains, the business being perfectly lawful, innocent and harmless.

Vide 168 N. Y. 671; 173 N. Y. 211; 83 App. Div. 201.

It transcends the police power and violates the constitutional guarantees of civil rights and privileges and of liberty (Const., art. 1, secs. 1-6).

People ex rel. Tyroler v. Warden, 157 N. Y. 116.

Dodge v. Cornelius, 168 N. Y. 251.

100.

Advise the abutting owners to commence action and procure an injunction restraining the construction and operation of the road, on the ground that it deprives them of property without due process of law (the owners having title to the center of the street) in violation of section 6, article 1, of the Constitution of the State, and as being in violation of section 18, article 3 thereof, which states that "No law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property-owners cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property-owners."

101.

STATE OF NEW YORK, }
CITY AND COUNTY OF ALBANY, } ss.:

A B, being duly sworn, deposes and says, that he is the attorney for the plaintiff herein.

That the foregoing complaint is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

That this action is founded upon a written instrument for the payment of money only, now in deponent's possession, which instrument is the source of deponent's information, and the grounds of his belief are (here set forth the grounds of your belief as to all matters not stated upon your knowledge, and the reason why the verification is not made by the party).

(Signed) **A B.**

Sworn to before me, this
day of, 190...

Notary Public,
Albany County, N. Y.
Code Civ. Proc., secs. 525, 526.

102.

Deliver, at once and before the statute of limitations intervenes, the summons to the sheriff of the county where B resides, with intent that it shall be actually served on B. If the sheriff serves it on B, or the first publication of the summons as against B, pursuant to an order for service upon him in that manner is made, within sixty days after the expiration of the time limited for the actual commencement of the action, the action will be deemed to have been commenced against B, within the meaning of each provision of the Code of Civil Procedure, which limits the time for commencing an action.

Code Civ. Proc., sec. 399.

103.

An injunction order is an order issuing out of the Supreme Court restraining the commission or continuance of an act, the commission or continuance of which, during the pendency of the action, would produce injury to the plaintiff, or requiring a person to do or to refrain from doing a particular thing.

Code Civ. Proc., sec. 603.

Am. & Eng. Encyc. of Law (2d ed.),
Vol. XVI, p. 342.

It may be granted in an action:

(1) "Where it appears, by affidavit, that the defendant, during the pendency of the action, is doing, or procuring or suffering to be done, or threatens or is about to do, or to procure, or suffer to be done, an act, in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, an injunction order may be granted to restrain him therefrom."

(2) "Where it appears, by affidavit, that the defendant during the pendency of the action, threatens or is about to remove, or to dispose of his property, with intent to defraud the plaintiff, an injunction order may be granted, to restrain the removal or disposition."

Code Civ. Proc., sec. 604.

104.

No. A false answer is not a sham answer, nor a sham defense which may be stricken out by the Court upon motion.

Code Civ. Proc., sec. 538.

Wayland v. Tysen, 45 N. Y. 281.

Thompson v. Erie R. R. Co., 45 N. Y.
468.

105.

Exhibit the original subpoena to the witness, and, at the same time, deliver to him in person, which must be at least five days before the day when he is required to attend, a copy

of the subpoena or a ticket containing its substance, and paying to him fifty cents for each day's attendance and eight cents for each mile going to the place of attendance.

Code Civ. Proc., secs. 852, 867, 3318.

106.

Six.

Code Civ. Proc., sec. 1176.

107.

The tenant has no remedy under the circumstances. The rain leaked through on the tenant's stock, directly under the leaky skylight, for several days.

"The tenant was not justified in creating or adding to such damage by leaving his property where he knew it would be subjected to the injury complained of. The measure of damages would be the difference in the rental value as they were, and would have been in a proper state of repair. (*Drago v. Mead*, 30 App. Div. 258.) But a lessee, knowing that his property, if left upon the premises, will be exposed to injury by a failure of the lessor to repair, has no right to take the hazard, and if he does, and his property is injured, he cannot recover of his lessor therefor."

Huber v. Ryan, 57 App. Div. 37.

108.

C has no right. The sheriff can sell.

B has an absolute power of disposition of the estate for his own use, and it is not accompanied by a trust. Such an estate is deemed a fee absolute in respect to the rights of creditors, purchasers and incumbrancers, and when the power of absolute disposition is executed, or the property is sold for the satisfaction of debts, future estates limited thereon are cut off.

Real Property Law (chap. 52, Laws 1909), sec. 149.

109.

The trust is valid. The absolute power of alienation is not suspended for any time, nor for any number of lives,

because there is a person in being, to wit: the executor, by whom an absolute fee in possession can be conveyed at any time, for the purposes of declaring the trust at end, and making immediate distribution of the proceeds thereof in the manner provided in the will.

Real Property Law (chap. 52, Laws 1909), sec. 42.

Sawyer v. Cubby, 146 N. Y. 192.

110.

Judgment for B. There was no consideration for B's promise, and it created no obligation against him, even though in writing.

Field's Lawyers' Brief, sec. 100.

Mills v. Wyman, 3 Pick. 207.

111.

B wins. The promise of C arose out of a new consideration, and was not within the statute of frauds, and having been adopted by B, the latter can maintain an action thereon against C.

Farley v. Cleveland, 4 Cow. 432.

Cleveland v. Farley, 9 Cow. 639.

Lawrence v. Fox, 20 N. Y. 268.

112.

The firm is not liable on the note. It was given by one of the partners in payment of his individual debt to and with the knowledge of C, and without the knowledge of the other members of the firm, or their subsequent assent.

Laverty v. Burr, 1 Wend. 529.

113.

Advise A that an action will not lie, at law, to recover the amount he claims. One partner cannot sue another partner to recover alleged profits, unless there has been a settlement of accounts, a balance struck and an express promise to pay.

Westerlo v. Evertsen, 1 Wend. 532.

Belanger v. Dana, 52 Hun, 39.

Carey v. Brush, 2 Caines, 293.

114.

A wins.

C, the indorser, before the maturity of the note personally requested the holder of the same to let it run for another year, and the latter consented on the express agreement of C to "let his name be on it and let it be as it was." C thereby waived demand and notice.

"The indorser of a promissory note may, before maturity, waive, either verbally or in writing, demand and notice of nonpayment; the waiver may result from implication or usage, or from any understanding between the parties which satisfies the mind that a waiver was intended."

Cady v. Bradshaw, 116 N. Y. 188.

115.

Judgment for A.

"A promissory note payable on demand, whether with or without interest, is due forthwith, and an action thereon against the maker is barred by the statute of limitations, if not brought within six years after its date."

Wheeler v. Warner, 47 N. Y. 519.

Knapp v. Greene, 79 Hun, 266.

Eaton & Gilbert on Com. Paper, p. 447.

116.

Judgment for B. C was B's agent for the purposes of the loan and his knowledge was B's knowledge until A colluded with C to defraud B.

"The rule which charges a principal with the knowledge of his agent is for the protection of innocent third persons. If a person colludes with an agent to cheat the principal, the latter is not responsible for the act or knowledge of the agent."

National Life Ins. Co. v. Minch, 53 N. Y.

144.**117.**

Judgment for the passenger.

The company is liable for any injury inflicted by its servant, when not acting within the scope of his employment,

while engaged in performing a duty which the carrier owes to the passenger.

Stewart v. Brooklyn & Crosstown R. R. Co., 90 N. Y. 588.

118.

A is released by the valid extension granted.

"Where a partnership is dissolved and one partner takes the partnership property and agrees to pay the partnership debts, as between himself and his former partner, he thereby, as to those debts, becomes the principal debtor, while the retiring partner occupies the relation of surety only (*Savage v. Putnam*, 32 N. Y. 501; *Morss v. Gleason*, 64 id. 204; *Colegrove v. Tallman*, 67 id. 95), and when such an arrangement is fairly and fully brought to the knowledge of a creditor of the firm, he is bound to respect the rights of his debtor, who thus becomes a surety, and thereby acquires the right of protection as such. (*Palmer v. Purdy*, 83 N. Y. 144; *Grow v. Garlock*, 97 id. 81; *U. S. N. Bank v. Underwood*, 2 App. Div. 342.)"

Reed & Barton v. Ashe, 18 App. Div. 502, 503, 504.

119.

Yes. C is not liable.

"A surety is prejudiced by the risk assumed by the non-disclosure of the fact that the principal, for want of integrity, is not entitled to confidence in the relation which his surety is induced to assume to him; such concealment is deemed fraudulent, and everything short of that is insufficient to avoid the obligation of the surety."

Ludekens v. Pscherhofer, 76 Hun, 548.
32 Cyc. 62.

120.

The wife had a vested interest in the policy at the moment of its delivery to the husband; he had no authority without her assent to surrender the same and she can recover the

amount of the policy less the unpaid premiums with interest thereon.

Whitehead v. N. Y. Life Ins. Co., 102
N. Y. 143.

121.

The insurance company is liable.

"A policy for a long period upon goods in a retail shop, applies to the goods successively in the shop, from time to time."

During the two months' vacation "the effect of the policy as an indemnity was suspended, not from any vice in the policy but from the absence of a subject for it to act upon * * * yet the policy still continued to be a valid subsisting contract in the hands of the insured, and had they subsequently purchased the same goods or other goods and brought them into the store they would have been covered by it."

Hooper v. Hudson River F. Ins. Co., 17
N. Y. 426.

Richards on Insurance Law (3d ed.), sec.
234.

122.

Judgment for B. It was A's duty, as well as contract to return the horse to B at the expiration of the month for which it was hired, and when he, without B's consent, kept the horse for a longer time, he became answerable "in all events" for losses happening thereafter.

Vol. 1, Cowen Treatise (5th ed.), sec. 105.
Ouderkirk v. C. N. Bank, 119 N. Y. 263.
Young v. Leary, 135 N. Y. 576.

5 Cyc. of Law & Pro., pp. 176, 177, 178,
182, 183, 184.

123.

Judgment for the defendant, warehouseman.

"A failure upon the part of a bailee to deliver to a bailor his property on demand raises a presumption of liability, but

this presumption is *prima facie* only, and may be overcome by evidence. And when it appears that the loss was caused by some accident, the onus continues upon the bailor to prove that such accident was caused by want of care upon the part of the bailee. (Clafin v. Myer, 75 N. Y. 260; Draper v. D. & H. Co., 118 id. 118; Stewart v. Stone, 127 id. 500.)"

Kaiser v. Latimer, 9 App. Div. 38.

Liberty Ins. Co. v. Cent. Vt. R. R. Co.,
19 id. 509.

124.

'A may replevy the horses from C or may demand same, and on refusal may sue in conversion, or he may waive the tort and sue for their value.

Terry v. Munger, 121 N. Y. 161.

Although A and B violated the statute relating to the conditional sale of goods and chattels, C is not within its protection for the reason that he is not a purchaser for value, having taken the horse in extinguishment of an antecedent debt.

Personal Property Law, (chap. 45, Laws
1909), secs. 62, 63.

Victoria Paper Mills v. N. Y. & Penn.
Co., 28 Misc. 123.

Levy v. Yazbeck, 22 Misc. 136.

Rochester Distilling Co. v. Devendorf, 72
Hun, 428.

125.

Judgment for 'A'

"The defendant being indebted to the plaintiff for goods sold, gave him the promissory note of a third person, which was received by him in full payment and discharge of the debt. The maker of the note was insolvent at the time of the transfer of the note, though this fact was unknown to the parties. Held, that it was a case of mutual mistake of fact, and that the plaintiff was entitled to recover from the defendants his original debt."

Roberts v. Fisher, 43 N. Y. 159.

126.

The Court should send the case to the jury.

The plaintiff was the sole witness to establish his cause of action.

"The general rule is that where a witness is interested in the question, although he is not impeached or contradicted, his credibility is a question for the jury, and the Court is not warranted in directing a verdict upon his testimony alone."

Saranac & L. P. R. R. Co. v. Arnold,
167 N. Y. 373.

127.

The Court should overrule the objection and allow the testimony.

"The presentment by a party to his debtor of an account in which he charges a gross sum for services for which he is entitled to be paid *quantum meruit*, there being no payment nor settlement of the account, does not preclude the creditor from showing what the services were reasonably worth, and recovering a larger sum than that at which they were so charged by him."

Williams v. Glenny, 16 N. Y. 389.
Shiland v. Loeb, 58 App. Div. 565.

128.

A has no remedy. He cannot prove his parol agreement. Parol evidence of such agreement is inadmissible as it tends to vary the written contract.

Love v. Hamel, 59 App. Div. 360.

129.

On the cross-examination of the opposing witness, call his attention to the time or place of the statement or other identifying circumstances and ask him if he did not at that time or place or under the circumstances stated say the fact to be as it is proposed to prove he said it was.

Rice v. Rice, 43 App. Div. 458; 187 N. Y. 128.

130.

The ruling of the court should be that the question was improper. His opinion should be obtained by stating to him an hypothetical case. (121 N. Y. 250, 12 Cyc. 255, 136 N. Y. 1, 518, 191 N. Y. 482.)

Reynolds v. Reynolds, 64 N. Y. 589; 136 N. Y. 518.

Abbott's Trial Brief, Facts, p. 229; 191 N. Y. 482.

131.

The sentence is void. Grand larceny being a felony the prisoner must, before the verdict is received, appear in person. It cannot be received in his absence.

Code Crim. Proc., sec. 434.

132.

The Court should refuse to discharge the prisoner.

"It is no defense to a prosecution for perjury that the defendant did not know the materiality of the false statement made by him; or that it did not in fact affect the proceeding in or for which it was made. It is sufficient that it was material, and might have affected such proceeding."

Penal Law, chap. 88; Laws 1909, sec. 1624.

133.

A was not guilty of robbery. The watch was "gone before B was aware of the transaction," so the taking was not by means of force, or violence or fear, and the pistol was employed merely as a means of escape.

Penal Law, (Laws 1909, chap. 88), secs. 2120, 2121.

A was guilty of grand larceny in the first degree in that he took the watch from the person of another in the night time.

Penal Law, (id.), sec. 1294.

134.

Advise B to defend.

He had the legal right to sink a well on his own farm and to take therefrom all the water that he needed for the full and proper enjoyment and usefulness of his land.

This being a subterranean stream with nothing upon the surface to indicate its existence which was unknown, it may be intercepted or diverted by the owner of the land for any purpose of his own, *vide* *Bloodgood v. Ayers*, 108 N. Y. 400, except, perhaps, for merchandising it, as limited in *Forbell v. City of New York*, 164 N. Y. 522, 525, and *Westphal v. New York*, 177 N. Y. 140.

135.

Yes, he has a good defense; the parents of the child are guilty of contributory negligence which is imputable to the child.

"Where a child of such tender age as not to possess sufficient discretion to avoid danger, is permitted by its parents to be in a public highway without any one to guard him, and is there run over by a traveler and injured, neither trespass or case lies against the traveler, if there be no pretense that the injury was voluntary, or arose from culpable negligence on his part."

Hartfield v. Roper, 21 Wend. 614.

136.

B can maintain his action; C cannot.

To say of a merchant that he is a bankrupt would tend to injure him in his trade, occupation or business. That would not injure a coachman in the same manner, hence the coachman would have to allege and prove special damages.

"Words written or spoken of a man in relation to his business or occupation which will have a tendency to hurt, or are calculated to prejudice him therein, are actionable, although they charge no fraud or dishonesty and were uttered without actual malice; and when proved unless the defendant shows a lawful excuse, the plaintiff is entitled to recover, without allegation or proof of special damage, as both the falsity of the words and resulting damage are presumed."

Moore v. Francis, 121 N. Y. 199.

Vide *Crane v. Bennett*, 177 N. Y. 106.

137.

John Doe would take the property devised by the brother subject to widow's dower; the sister's property would go to her heirs-at-law and next of kin.

If a testator, having disposed of the whole of his estate by will, afterward marries and has issue of such marriage, and the wife or the issue be living at his death, his will is revoked; the brother dies without having had issue, hence his will stands. A will executed by an unmarried woman is revoked by her subsequent marriage.

Redfield's Surrogate Practice (6th ed.),
sec. 228, pp. 191, 192.

138.

The widow takes all, under the circumstances disclosed.

She takes one-half, and the residue because it does not exceed two thousand dollars.

Decedent Estate Law (Laws 1909,
chap. 18), sec. 98, sub. 3.

139.

The will stands as written and the sons take the residuum; the irate father should have re-executed the same.

"Where a testator attempts to revoke a particular clause by canceling it and giving a legacy thereby bequeathed over to other persons by inserting their names in the will, but without re-execution and attestation of the will, the revocation will not be carried into effect."

Redfield's Surrogate Practice (6th ed.),
sec. 224, p. 187.

Matter of Carver, 3 Misc. 567.

Matter of Wilcox, 46 St. Rep. 877.

140.

The Supreme Court has jurisdiction.

"The Supreme Court may compel specific performance

by a resident of this State of a contract for the conveyance of land lying without its jurisdiction."

Newton v. Bronson, 13 N. Y. 587.

Code Civ. Proc., secs. 982, 984.

Muller v. Dows, 94 U. S. 444.

Dull v. Blackman, 169 U. S. 243.

141.

C as a junior mortgagee has the right to contest the validity of the prior mortgage. This right grows out of his right to redeem, that is to say, his right to have the fund available for the payment of his claim as large as possible.

Vol. XX, Encyc. of Law (2d ed.), p. 1023.

C can bring an action in equity to cancel B's mortgage, and in that action obtain an injunction order restraining B's foreclosure during the pendency of the action.

Code Civ. Proc., secs. 603, 604.

142.

Yes. **C** was not a purchaser for value.

"A legal title under a recorded deed is good as against a subsequent mortgagee who received his mortgage as security for or in payment of a precedent debt, and who surrendered no security or parted with no value, as he is not a purchaser for a valuable consideration within the meaning of the recording act."

Cary v. White, 52 N. Y. 138.

143.

A wins. He is not liable until B recovers a judgment against the corporation and execution is returned unsatisfied in whole or in part.

Stock Corporation Law (chap. 61, Laws 1909), secs. 56, 59.

144.

Judgment in favor of the X Bank against A. Judgment in favor of the B manufacturing corporation against the X Bank.

A manufacturing corporation has no power to indorse notes for the accommodation of another, and the note was void as against the corporation in the hands of the X Bank, which discounted the same with knowledge of the facts.

Nat. Park Bank v. G. A. M. W. S. & Co.,
116 N. Y. 281.

Fox v. Rural Home Company, 90 Hun,
365.

145.

No. A stockholder of a corporation is personally liable for all debts due and owing to any of its laborers, servants or employees, other than contractors, for services performed by them for such corporation, but before such laborer, servant or employee shall charge such stockholder for such services, he shall give him notice in writing within thirty days after the termination of such services that he intends to hold him liable and shall commence an action therefor within thirty days after the return of an execution unsatisfied against the corporation upon a judgment recovered against it for services.

Stock Corp. Law (chap. 61, Laws 1909),
sec. 57.

Berwind v. Ewart, 90 Hun, 60.

146.

Up to the time of the divorce the husband had a tenancy by the courtesies initiate in the wife's house and lot, which he lost when she obtained a divorce from him.

Renwick v. Renwick, 10 Paige, 420.

The son inherits the property.

Decedent Estate Law (chap. 18, Laws
1909), sec. 81.

147.

A has no rights; B was not guilty of any legal irregularities.

B, the wife, had the legal right to marry again, when her husband was finally sentenced to imprisonment for life, and his subsequent pardon did not restore him to the rights of the previous marriage or to the guardianship of the child.

Dom. Rel. Law (chap. 19, Laws 1909),
secs. 6, 58.

148.

Judgment for A, the husband.

Although the wife has been emancipated in many things yet she is still under the common-law disability of being unable to maintain an action against her husband to recover damages for an assault and battery committed by him upon her.

Abbe v. Abbe, 22 App. Div. 484.

149.

Yes. "The granting of the new trial places the parties in the same position as if no trial had been had."

Code Crim. Pro., secs. 464, 543, 544.

People v. Palmer, 109 N. Y. 413.

People v. Wheeler, 79 App. Div. 399.

Trono v. United States, 199 U. S. 521.

The rule was otherwise prior to the Code.

People v. Dowling, 84 N. Y. 478.

People v. Cignarale, 110 N. Y. 30, 31.

People v. McCarthy, 110 N. Y. 314,
315.

150.

The Constitution (art. 1, sec. 6) guarantees to all persons accused of crime the right to appear and defend in person and with counsel, and as the Sheriff refused to allow you a private interview with your client in order to prepare for

his trial, he has violated the constitutional rights of the prisoner and a peremptory writ of mandamus will issue to compel him to grant your application.

People ex rel. Burgess v. Riseley, 13
Abb. N. C. 186.

151.

(1) Summons.

STATE OF NEW YORK.

SUPREME COURT, COUNTY OF ALBANY.

| | |
|----------------------|---|
| JANE DOE, Plaintiff, | } |
| <i>against</i> | |
| JOHN DOE, Defendant. | |

To the above-named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint. Trial to be held in the county of Albany.

Dated, this day
of January, 190..

X Y Z,
Plaintiff's Attorney.

Office and Post-office Address,
....., Albany, N. Y.

Code Civ. Proc., sec. 418.

(2) Legibly write upon the face thereof the following words, "action for a divorce."

Code Civ. Proc., sec. 1774.

(3)

STATE OF NEW YORK, }
 CITY AND COUNTY OF ALBANY, } ss.:

John Jones, being duly sworn, deposes and says: That he is eighteen years of age, and that on the . . . day of January, 190. ., at No. 50 Ninth street, in the city of Albany, N. Y., he served the annexed summons personally on John Doe, the defendant herein named, by delivering a copy thereof to him personally, and leaving the same with him, and that he knew the person so served to be the person mentioned and described in said summons as defendant.

That said summons so served on defendant, as aforesaid, had, at the time of such service, legibly written upon the face thereof the following words, "action for a divorce."

That deponent knows said John Doe to be such defendant and the proper person to be served with said summons, because he has known the said defendant for the past ten years, and has been a frequent visitor at his residence, No. 50 Ninth street, in the city of Albany, where said defendant lived with his wife, the plaintiff herein.

Sworn to before me, this
 day of January, 190. .

Code Civ. Proc., sec. 1774.
 Sup. Ct. Rule 18.

152.

If the county designated in the complaint as the place of trial is not the proper county, you must serve upon the plaintiff's attorney, with your answer or before service of the answer, a written demand to change the place of trial to the proper county, designating it.

If the plaintiff's attorney does not serve his written consent to the change as proposed by the defendant within five days after the service of the demand, the defendant's attorney may, within ten days thereafter, serve notice of motion to change the place of trial.

Code Civ. Proc., secs. 982-989, inclusive

153.

Sue the young woman in tort for the damages sustained.

She was a bailee, and the moment she transcended the terms of the bailment and used the horse in a manner different than that agreed upon by driving beyond the ten miles, and keeping it for three days, she was guilty of conversion.

Disbrow v. Tenbroeck, 4 E. D. Smith, 397.

Fish v. Ferris, 5 Duer, 49.

Infants are liable for their torts, the same as adults.

Campbell v. Stakes, 2 Wend. 137.

Moore v. Eastman, 1 Hun, 578.

Conklin v. Thompson, 29 Barb. 218.

She is answerable for all losses happening after the time for which she hired the horse.

Vol. 1, Cowen's Treatise (5th ed.), sec. 105.

Young v. Leary, 135 N. Y. 576.

Ouderkirk v. C. N. Bank, 119 N. Y. 263.

5 Cyc. of Law & Pro., title Bailment, pp. 176, 177 *et seq.*

154.

A sham answer or a sham defense can be stricken out by the Court upon motion (Code Civ. Proc., sec. 538), but a verified counterclaim cannot be stricken out as sham under that section.

Briggs v. Freedman, 9 Civ. Proc. 73.

Collins v. Suan, 7 Robt. 94.

Fettretch v. McKay, 47 N. Y. 426.

155.

An action for damages for an assault, not being an action in which the clerk can enter final judgment, without permission, the plaintiff must apply to the Court or to a judge or justice thereof out of court for judgment.

Code Civ. Proc., sec. 1214.

The damages must be ascertained by a writ of inquiry (Code Civ. Proc., sec. 1215); which are assessed by a sheriff's jury.

Rumsey's Practice, Vol. 2, p. 600.

The report or inquisition may be directed to be returned to the Court or judge for further action; if not so returned, the clerk enters judgment for the damages ascertained by the inquisition without any further application.

Code Civ. Proc., sec. 1215.

156.

Advise the sheriff to empanel a jury to try the validity of the claim to the horses of the person claiming the same.

Code Civ. Proc., sec. 657.

157.

Yes. He was in possession and made permanent improvements on the faith of the donor's promise. Equity will protect the gift under the circumstances.

"A parol gift of real estate and a parol promise to convey the same is valid and enforceable in equity, where the donee has entered into possession of the property and made permanent improvements thereon, on the faith of the donor's promise, and this, although when specific performance by the donee is claimed, the rental value of the property for the time it has been occupied by the latter would be more than the amount expended by him."

Young v. Overbaugh, 145 N. Y. 158.

Hays v. Knauth, 169 N. Y. 304.

158.

C takes the planing machines; they are personal property under the circumstances.

D takes the water wheel and the gearing for propelling the machinery; they are real estate.

Murdock v. Gifford, 18 N. Y. 28.

Ford v. Cobb, 20 N. Y. 344.

Voorhees v. McGinnis, 48 N. Y. 278.

159.

No. B's defense is not good.

The fact that A refused to allow B to enjoy his legal right of passage over the right of way deeded to him does not justify B in committing a trespass on A's land.

B should have removed the obstruction and sued for his damages.

Williams v. Safford, 7 Barb. 309.

160.

Judgment for Richard Roe. The contract is void for want of mutuality. Doe did not agree to employ Roe for any particular time, hence Roe was not obliged to stay for any definite period, and could leave at his option without incurring liability.

Burnet v. Bisco, 4 Johns. 235.

Tucker v. Woods, 12 Johns. 190.

(Vol. 7 Am. & Eng. Encyc. of Law (2d ed.), p. 114; vol. 20, id., p. 14.

161.

A has no defense.

"An action for the breach of promise will lie at once, upon a positive refusal to perform the contract of marriage, although the time specified for the performance has not arrived."

Burtis v. Thompson, 42 N. Y. 246.

Windmuller v. Pope, 107 N. Y. 674.

Roehm v. Horst, 178 U. S. 1.

Vide 30 L. R. A. 33, and note.

162.

(1) Master and servant.

Vol. 20 Am. and Eng. Encyc. of Law (2d ed.), p. 18.

Wilber v. Sisson, 53 Barb. 258.

(2) Tenants in common.

Parker v. Mott, 43 App. Div. 341.

Putnam v. Wise, 1 Hill, 234.

163.

Judgment for C.

"The rule is that as to all persons who have had actual dealings with the firm, actual notice of the dissolution must be given."

Bank v. Weston, 159 N. Y. 211.

164.

Judgment for B.

The note was given in consideration of the right to make, use and sell a patented article and contained the words, "given for a patent right."

Such a note or instrument in the hands of any purchaser or holder is subject to the same defenses as in the hands of the original holder.

Neg. Inst. Law (chap. 43, *Laws 1909*),
sec. 330.

Eaton & Gilbert on Com. Paper, p. 690.

165.

Judgment for B. C was not an indorser but a guarantor, and as such was not entitled to notice of dishonor.

"A person placing his signature upon an instrument, otherwise than as maker, drawer or acceptor is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity."

Neg. Inst. Law (chap. 43, *Laws 1909*),
sec. 113.

Eaton & Gilbert on Com. Paper, p. 412;
Id., p. 445.

166.

Judgment for C. It was A's duty to disclose his principal

"A person, even though making an agreement for another, makes himself personally liable thereon if he contracts in his own name without disclosing his principal, although the other party to the contract may suppose that he is acting as agent."

De Remer v. Brown, 165 N. Y. 419.

He must have actual knowledge.

Cobb v. Knapp, 71 N. Y. 348.

167.

Judgment for A.

The agent had no right to sell his own stock to his principal; it was a breach of duty and the contract is subject to rescission, irrespective of any question of intentional fraud or actual injury.

Conkey v. Bond, 36 N. Y. 427.

Taussig v. Hart, 58 N. Y. 425.

168.

A is discharged. At the time A called upon B to sue C, the debtor, the latter was solvent; the notice was explicit and the surety, having become prejudiced by the subsequent insolvency of C, is discharged.

Maier v. Canavan, 8 Daly, 272.

Marsh v. Dunckel, 25 Hun, 167.

Thompson v. Hall, 45 Barb. 214.

Hunt v. Purdy, 82 N. Y. 486.

169.

D can recover from A and B but not from C the surety. His obligation was to the principal named in the bond, and when the bond was paid, he had no further concern or interest in the transaction. The payment was made without his request or promise to repay.

Elmendorph v. Tappen, 5 Johns. 176.

170.

The policy should be paid to A. A policy issued upon the life of a husband, payable to the wife, if living, if not living, to their children is assignable by the wife with the written consent of the husband. The consideration for the assignment, to wit, their "joint debt," was sufficient.

Anderson v. Goldsmidt, 103 N. Y. 620.

Miller v. Campbell, 140 N. Y. 457.

Dom. Rel. Law (L. 1909, chap. 19), sec. 52.

150 N. Y. 269, 169 N. Y. 199.

171.

A is entitled to recover his insurance, \$2,000 on the horses and \$2,000 on the cattle. He is not entitled to recover the insurance on the sheep which were mortgaged.

"Having made the property distinct subjects of insurance by separately valuing it, by distributing the insurer's risk among the several subjects of insurance, and limiting its risk among the several subjects of insurance, and limiting its risk as to each, the parties to the contract will be deemed to have intended as many distinct insurances as there may be subjects of insurance; and the avoidance of the policy by breach of its condition as to one of the subjects of insurance will not have the effect of avoiding it as to the others, in the absence of language clearly indicating that such was the intention of the parties."

Am. Artistic Gold S. Co. v. Glens Falls Ins. Co., 1 Misc. 117.

Knowles v. Am. Ins. Co., 66 Hun, 220; *affd.*, 142 N. Y. 641; 61 App. Div. 350.

172.

The transaction was a sale, and A had no rights. Flour from the identical wheat was not to be delivered.

Foster v. Pettibone, 7 N. Y. 433.

Vide Mack v. Snell, 140 N. Y. 195 and 201.

173.

The jeweler has no lien. The vase was to be delivered to A on January 2, 1902, and A was to pay him \$500 for his services within sixty days thereafter. This credit prevented the jeweler from obtaining a lien.

"Where a particular time of payment is fixed by the contract which is or may be subsequent to the time when the owner is entitled to a return of the property, there can be no lien."

Wiles L. Co. v. Hahlo, 105 N. Y. 234.

Morgan v. Congdon, 4 N. Y. 552.

174.

B cannot offset his claim for damages.

The contract was one to "thereafter manufacture 5,000 watch cases."

There was no warranty which survived acceptance, nor any fraud or concealment. There were no latent defects; the defects were determined upon inspection and when B, with knowledge of their condition, accepted the same, and neither returned nor offered to return them, he lost his claim for damages, if any.

Smith v. Coe, 170 N. Y. 162.

Bierman v. City Mills Co., 151 N. Y. 482.

Carleton v. Lombard Ayres Co., 149 N. Y. 137.

175.

B can do nothing; he has no claim. The contract is void by the statute of frauds.

It was not in writing and being for the sale and delivery of goods for the price of more than \$50, it was void because the buyer did not receive or accept part or all of such goods at the time, nor at the time pay any part of the purchase money.

Personal Property Law (chap. 45, Laws 1909), sec. 31, subd. 6.

176.

Yes; the exception was well taken.

"The declarations of one partner after dissolution of the firm, not made in the business of winding up, and not in relation to any transaction or dealing connected with the dissolution of the partnership, are inadmissible against a copartner."

Nichols v. White, 85 N. Y. 531.

Desbecker v. Cauffman, 169 N. Y. 553.

Encyc. of Evid., vol. 1, p. 580.

177.

The objection was that the account-books were not competent nor proper as being the declarations of the party in his own favor. The Court properly ruled them out. If the tradesman had then proven that the books were his books of account, kept by him in his business as a retail grocer, and contained items of account kept in the ordinary course of book accounts, that there were regular dealings between the plaintiff and defendant, that some of the articles mentioned had been delivered and that he kept honest and fair books of account by some person who had dealings with him and settled his accounts thereon, and that he kept no clerk, the books would have been received as admissible evidence for the consideration of the Court or jury.

Vosburgh v. Thayer, 12 Johns. 461.

Smith v. Rentz, 131 N. Y. 169, 171.

178.

The deed proves itself, as an ancient document after thirty years. The deed, however, must be free from just grounds of suspicion and must come from the proper custody or have been acted upon, so as to afford some corroborative proof of its genuineness.

1 Greenleaf on Evidence, sec. 570.

Donohue v. Whitney, 133 N. Y. 186.

Stephens Digest Law Evidence (Beers' ed., N. Y.), 315.

179.

The ruling was wrong.

In a case where the question of fraud or deceit in a written contract is in issue, oral evidence of the acts and declarations of the parties prior to the execution of the contract touching the fraud or deceit are admissible.

Vol. 14 Encyc. of Law (2d ed.), 494.

Howison v. Alabama Coal & Iron Co.,
70 Fed. Rep. 683.

Koop v. Handy, 41 Barb. 454.

180.

The ground of the objection was that A was endeavoring to impeach his own witness. The objection was sustained.

"A party may contradict his own witness as to a fact material in the case, although the effect of the proof may be to discredit him; but he cannot impeach him, although subsequently called as a witness for the adverse party, either by general evidence or by proof of contradictory statements out of Court."

Coulter v. Am. Merchts. Un. Exp. Co.,
56 N. Y. 585.

181.

Forgery in the first degree.

Penal Law, (Laws 1909, chap. 88), sec.
885.

182.

No. The confession was not voluntary having been made after arrest upon the express promise of the officer that if he would confess he would use his influence in his behalf, provided he made disclosures which would be of benefit to the government.

Cox v. People, 80 N. Y. 502.
People v. Chapleau, 121 N. Y. 266.
1 Greenleaf on Evidence, sec. 219.

183.

The conviction will stand.

A and B confederated to rob C. A, in furtherance of the conspiracy, violently assaulted C so as to enable his confederate B to steal the watch, which he was enabled to do by reason of the force and violence used upon C. Both were principals and guilty of robbery. B was properly convicted.

Penal Law (Laws 1909, chap. 88), secs.
2, 2120, 2126.
197 N. Y. 152.

184.

The company is not liable. A was injured by the lightning which was the proximate cause of his injury, and not

by the defect in the locomotive, which was the remote cause. The defect in the locomotive neither invited nor caused the lightning nor did it come because of the delay.

Vide Laidlaw v. Sage, 158 N. Y. 98
et seq.

185.

No; the judgment will not be affirmed.

The release of one of two or more joint tort feorsors is a discharge of all.

Barrett v. Third Ave. R. R. Co., 45
N. Y. 628.

Mitchell v. Allen, 25 Hun, 543.

Kolk v. National Surety Co., 176 N. Y.
233.

186.

(1) The first proposition is correctly charged. An insane person is liable for his torts the same as a sane person.

(2) The second proposition is incorrectly charged.

An insane person is liable only for compensatory damages, and not for punitive damages for assault and battery, because he is incapable of intention which is malice.

Williams v. Hays, 143 N. Y. 442.

Krom v. Schoonmaker, 3 Barb. 647.

187.

The daughter, D, takes the house and lot specifically devised to her; B, the son, all the remainder of the property including the stock of the X Bank found in the envelope; the daughter, C, takes nothing. There arose what is known in the law as "an ademption."

"If a testatrix devises real estate and sells the same before the will takes effect, the proceeds of the sale will become personal estate, and no court can substitute the money received by the testatrix for the land devised."

Ametrano v. Downs, 170 N. Y. 391.

Adams v. Winne, 7 Paige Ch. 97.

Beck v. McGillis, 9 Barb. 35.

The direction on the envelope that it was "his will and intention that the stock should go to C, in place of the real estate for which it stood and represented and of which it was the avails," was ineffectual as a gift for it was not known nor was it delivered prior to the father's death.

No claim is made that the memorandum was either a will or a codicil thereto or a substitutionary clause therein; if either, it would be invalid for the want of proper execution.

Redfield's Surrog. Prac. (6th ed.), sec. 751, pp. 628, 629.

188.

Where an unmarried man disposes of his whole estate by will and thereafter marries and has issue of the marriage, which or his wife are alive at the time of his death, the subsequent marriage revokes his will.

Redfield's Surrog. Prac. (6th ed.), sec. 228, pp. 191-192.

A therefore died intestate and his real estate descended to his two children share and share alike subject to the widow's dower.

Real Property Law (chap. 52, Laws 1909), sec. 190.

Decedent Estate Law (chap. 18, Laws 1909), sec. 81.

189.

B cannot recover his legacy; C being a minor can.

Such a clause in a will is valid and will be upheld (*Matter of Stewart's Will*, 5 N. Y. Supp. 32; 29 Encyc. of Law [1st ed.], p. 483), except as against infants who contest a will not personally but by guardian.

Woodward v. James, 44 Hun, 96.

Bryant v. Thompson, 59 Hun, 545.

Id., 128 N. Y. 426, 432.

190.

A wins.

"He who comes into equity must come with clean hands."

An offensive and detrimental stable, erected and maintained on a lot next adjoining A's family residence, would be a nuisance and when B procured from A written contract

of sale in reliance on his false representation that he wished to buy it so as to erect thereon a residence for himself and family, when as matter of fact he bought it with intent that an offensive and detrimental stable should be erected thereon, he was guilty of a fraud, directly connected with the matter in litigation, and will not be decreed specific performance.

Vide 11 Am. & Eng. Encyc. of Law (2d ed.), p. 164.

191.

B being a party to the action is entitled to have the property sold in the inverse order of alienation.

He can have the judgment in the action provide that the third parcel, the property of the owner, be sold first; if that be insufficient, then that the property sold to C be next disposed of; if there then remains any sum due and unpaid on the judgment, that his parcel be finally sold.

N. Y. Life Ins. & Trust Co. v. Milnor,
1 Barb. Ch. 353.

Woods v. Spalding, 45 Barb. 602.

192.

The steel owned by B was sacrificed to save the cargo and the vessel at a time when both were in imminent danger of being lost or destroyed by reason of the perils of the sea, and he is entitled, under the law of general average, to contribution from all that was saved out of the ship, freight and cargo, to make good his general average loss.

Nelson v. Belmont, 21 N. Y. 36.

Harris v. Moody, 30 N. Y. 268.

The maxim involved is "Equality is equity."

Vol. XI Am. & Eng. Encyc. of Law (2d ed.), p. 187.

Vol. 7, id., pp. 328, 329.

193.

The note is invalid. It required corporate action, to wit, a resolution of the board of directors, to authorize the treasurer to execute the note for a special purpose. Corporate

action to bind the corporation can only be had by appropriate action of its governing board; that is, by the collective authority of the board of directors acting as a board. Such action was not had here, and, therefore, the treasurer had no power to make the note in question.

People's Bank v. St. Anthony's R. C. Church, 109 N. Y. 512.

194.

The corporation being unable to pay its obligations as they become due in the regular course of business was insolvent, and all officers and directors were forbidden to transfer any of its property to any of its officers, directly or indirectly, for the payment of any debt or upon any other consideration than the full value of the property paid in cash.

The transfer of the property to A, its president, under the circumstances was invalid. A is bound to account therefor to the creditors, stockholders or other trustees of the X corporation; in addition, he is personally liable to the creditors and stockholders of the corporation to the full extent of any loss they may respectively sustain by the transaction.

Stock Corp. Law (chap. 61, Laws 1909), sec. 66.

195.

It is unlawful for a foreign stock corporation, other than a moneyed corporation, to do business in this State without having first procured from the Secretary of State a certificate that it has complied with all the requirements of law, as set forth in sections 15 and 16 of the General Corporation Law (chap. 28, Laws 1909), as amended.

It must also pay a license fee.

Sec. 181 Tax Law (chap. 62, Laws 1909).

196.

He can, as corespondent named in the complaint, at any time before the entry of judgment, appear either in person or by attorney, demand of plaintiff's attorney a copy of the

summons and complaint, and defend such action so far as the issues affect him.

Sec. 1757, Code Civ. Proc.

197.

Yes, he can. Not having the money, it is not necessary for him to restore. If he had possession of any of the purchase price when he disaffirms or after he became of age, the rule would be different.

"The right (of the infant) to repudiate is based upon the incapacity of the infant to contract, and that incapacity applies as well to the avails as to the property itself, and when the avails of the property are improvidently spent or lost by speculation or otherwise during minority, the infant should not be held responsible for inability to restore them. To do so would operate as a serious restriction upon the right of an infant to avoid his contract, and in many cases would destroy the right altogether."

Green v. Green, 69 N. Y. 553.

Rice v. Butler, 25 App. Div. 388, 392.

MacGreal v. Taylor, 167 U. S. 688 and
note, Book 42, Co-op. Ed. U. S.
Repts., p. 326.

198.

It is the husband's obligation to furnish suitable support for his wife.

He is not obliged to support her, however, when she willfully deserts and refuses to live with him. The tradesman knew of this and if he supplied her with necessities during that period he cannot hold the husband therefor. When on January 1, 1900, she offered to return to her husband, his liability to furnish her with necessities was thereby revived, and he is liable for those furnished thereafter.

McGahay v. Williams, 12 Johns. 293.

McCutchen v. McGahay, 11 Johns. 281.

Bloomington v. Brinckerhoff, 2 Misc.

49.

Daubney v. Hughes, 60 N. Y. 187.

199.

The property of the X Electric Railway being necessary to the proper use and enjoyment of its franchises, it cannot be condemned by right of eminent domain by another railroad corporation for its corporate purposes without an express act of the Legislature permitting it to do so.

Matter Boston & Albany R. R. Co., 53
N. Y. 575.

S. R. T. Co. v. Mayor, 128 N. Y. 10.

People ex rel. v. Thompson, 98 N. Y.
6 at 11.

Matter of Pet. of N. Y., L. & W. R. R.
Co., 99 N. Y. 12.

Matter of City of Buffalo, 68 N. Y. 167.

Matter of N. Y. C. & H. R. R. Co., 77
N. Y. 249.

200.

The sentence is invalid.

"A statute which purports to authorize the prosecution, trial and punishment of a person for an offense previously committed, and as to which all prosecution, trial, and punishment were at the time of the passage of such statute already barred, according to pre-existing statutes, is *ex post facto*."

12 Am. & Eng. Encyc. of Law (2d ed.)
532.

In this State that rule has been applied to offenses committed prior to the passage of the act extending the time within which indictments may be found.

People v. Lord, 12 Hun, 282.

Citing Wharton's Crim. Law, Vol. 1, sec.
444a.

Vide Carpenter v. Shimer, 24 Hun, 465.

People v. O'Neil, 109 N. Y. 251.

201.

SUPREME COURT, ALBANY COUNTY.

JANE DOE, an Infant, by A. B., her Guardian, Plaintiff,

against

JOHN STILES, Defendant.

The plaintiff complaining of the defendant alleges:

I. That the plaintiff is an infant under the age of twenty-one years.

II. That on the day of, 190.. at Albany, N. Y., upon application duly made on her behalf, the above-named A B was, by an order of this Court, duly appointed the guardian of the plaintiff for the purposes of this action.

III. That heretofore the defendant made his promissory note in writing, dated on the second day of January, 1903, at Albany, N. Y., and thereby promised to pay to the plaintiff or to her order, five hundred dollars (\$500.00), three months after said date.

IV. That no part of said note has been paid.

Wherefore, plaintiff demands judgment against said defendant for five hundred dollars with interest thereon from April 3, 1903, besides the costs of this action.

X Y Z,

Plaintiff's Attorney,

Office and Post-office Address:, Albany, N. Y.

The complaint of an infant by his guardian must set forth the appointment of the guardian with certainty as to time, place, and power of appointment.

Grantmann v. Thrall, 44 Barb. 173.

Stanley v. Chappell, 8 Cow. 235.

Hulbert v. Young, 13 How. Pr. 413.

Code Civ. Proc., secs. 468, 469, 470, 472.

202.

Keep it. An answer to a verified complaint in an action for libel need not be verified. The defendant need not verify

in a case where he would be privileged from testifying as a witness concerning an allegation or denial contained in the pleading.

Code Civ. Proc., sec. 523.

Blaisdell v. Raymond, 6 Abb. Prac.
Repts. 148.

203.

Motion denied.

"The answer did not put in issue the allegations of the complaint that defendant made the excavation which caused the injury, and that the same was in a public street; and, therefore, plaintiff was not required to prove the same on the trial."

Clark v. Dillon, 97 N. Y. 370.

204.

A reply is necessary, where the answer contains a counter-claim and the plaintiff does not demur, and in a case where an answer contains new matter constituting a defense by way of avoidance, the Court directs the plaintiff to reply to the new matter.

If a reply is necessary and the plaintiff fails to reply, apply, upon notice, for judgment thereon.

Code Civ. Proc., secs. 514, 515, 516.

205.

"Where the injunction order was granted without notice, the party enjoined may apply, upon the papers upon which it was granted, for an order vacating or modifying the injunction order. Such an application may be made, without notice, to the judge or justice who granted the order, or who held the term of Court where it was granted; or to a term of the Appellate Division of the Supreme Court. It cannot be made without notice, to any other judge, justice or term, unless the applicant produces proof, by affidavit, that, by reason of the absence or other disability of the judge or justice who granted the order, the application cannot be made to him; and that the applicant will be exposed

to great injury, by the delay required for an application upon notice. The affidavit must be filed with the clerk; and a copy thereof, and of the order vacating or modifying the injunction order, must be served upon the plaintiff's attorney before that order takes effect."

Code Civ. Proc., sec. 626.

206.

Obtain a writ of prohibition.

"The office of a writ of prohibition is to prevent the exercise by a tribunal possessing judicial powers of jurisdiction over matters not within its cognizance, or to prevent it from exceeding its jurisdiction in matters within its cognizance."

Thomson v. Tracy, 60 N. Y. 31.

Code Civ. Proc., secs. 2091, 2102.

207.

COMMONWEALTH OF MASSACHUSETTS, } ss:
COUNTY OF SUFFOLK,

On this day of, 1903, before me personally appeared A B, to me personally known, and known to me to be the individual described in and who executed the foregoing instrument and acknowledged that he executed the same for the uses and purposes therein mentioned.

X Y,

Justice of the Peace, or Notary Public.

Attach county clerk's certificate as to Massachusetts officer's authority.

Vide Real Property Law (chap. 52 Laws 1909), secs. 299 *et seq.*

208.

A's mortgage is ahead of C's judgment. An unrecorded mortgage has priority over a subsequent docketed judgment, unless there be some facts making a superior equity.

Weaver v. Edwards, 39 Hun, 233, *affd.*,
121 N. Y. 653.

209.

From C and D. The farm having been devised to the "son and daughter and their heirs to be held in joint tenancy," it is subject to the doctrine of survivorship, and when the son died intestate, his estate in the farm passed at once to the daughter, his cotenant, to the exclusion of his son. When the daughter died intestate the title to the farm became vested in her two sons B and C, and when B died intestate, his share went to his daughter D, who with C owned the entire farm at the time your client desired to purchase it.

Kent's Com., Vol. 4, pp. *358, *359, *360.

Real Property Law (chap. 52, Laws 1909), sec. 66.

Willard on Real Estate, pp. 177, 183.

Decedent Estate Law (chap. 18, Laws 1909), sec. 81.

210.

A cannot recover from B the \$1,000 paid for the reason that he himself repudiates the contract.

A contract, made as well for the sale of real as of personal property, which is entire, founded upon one and the same consideration, and is not reduced to writing is void, as well in respect to the personal as to the real property, the subject of the contract.

De Beerski v. Paige, 36 N. Y. 537.

Thayer v. Rock, 13 Wend. 53.

Harsha v. Reid, 45 N. Y. 420.

"If one pays money, or renders service or delivers property upon an agreement condemned by the statute of frauds he may recover the money paid in an action for money had and received, and he may recover the value of his services and of his property upon an implied assumpsit to pay, provided he can show that he has been ready and willing to perform the agreement, and the other party has repudiated or refused to perform it."

Day v. N. Y. C. R. R. Co., 51 N. Y. 590.

Reed v. McConnell, 133 N. Y. 435.

211.

Yes. Not knowing that A was married at the time of the promise. She can sue at once; no demand or refusal is necessary, it being impossible for A to perform.

Cammerer v. Muller, 60 Hun, 578.

Kerns v. Hagenbuchle, 17 N. Y. Supp. 367.

Blattmacher v. Saal, 29 Barb. 22.

Johnson v. Caulkins, 1 Johns. Cases, 116.

Willard v. Stone, 7 Cow. 22.

Windmuller v. Pope, 107 N. Y. 674.

Burtis v. Thompson, 42 N. Y. 246.

212.

Apply the money on the second or partnership execution. Partnership property is not liable for individual debts until the partnership debts are paid.

Eighth Nat. Bank v. Fitch, 49 N. Y. 539.

Muir v. Leitch, 7 Barb. 341.

Kelly v. Scott, 49 N. Y. 595.

Menagh v. Whitwell, 52 N. Y. 146.

213.

No. A is not estopped; the sale having been made without notice or knowledge of A's acts or declarations, it was not made in reliance upon the same, nor in belief that A was a partner. A did not enter into the transaction at the time of its consummation.

Griffin v. Carr, 21 App. Div. 51.

Malloney v. Horan, 49 N. Y. 111.

214.

A is not liable on the note, having transferred the same without indorsement, but he is guilty of a misdemeanor for having transferred a promissory note, not having the words, "given for a patent right," written or printed legibly and prominently on the face of such note above the signature

thereto, knowing the consideration of such note to consist in whole or in part of the right to make, use and sell a certain invention claimed by him to be patented.

Sec. 330, Nego. Inst. Law (chap. 43, Laws 1909).

215.

Judgment for the X Bank. D, one of his partners, was notified of the nonpayment and dishonor of the note.

"Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution."

Nego. Inst. Law (chap. 43, Laws 1909),
sec. 170.

Eaton & Gilbert on Com. Paper, p. 491.
Hubbard v. Matthews, 54 N. Y. 43, 50.

216.

Judgment for C. C was not called upon to inquire, it was A's duty to disclose his principal.

"A person, even though making an agreement for another, makes himself personally liable thereon if he contracts in his own name without disclosing his principal, although the other party to the contract may suppose that he is acting as agent."

De Remer v. Brown, 165 N. Y. 419.

C was entitled to actual knowledge of the name of A's principal.

Cobb v. Knapp, 71 N. Y. 348.

217.

B can recover his commission from both A and C.

He brought them together and they then personally negotiated with each other and concluded the sale. B did all that he was employed to do, viz., to find a purchaser for each, for his house upon terms and conditions to be agreed

upon after they met. There was nothing inconsistent nor improper in his conduct, and there was "no violation of duty in such case in agreeing for commissions from each party upon a bargain being struck, or in failing to notify each party of his employment by the other."

Knauss v. K. B. Co., 142 N. Y. 75.

Gracie v. King, 56 App. Div. 203.

218.

C is entitled to the benefit of all collaterals received by the creditor, although he did not originally rely upon them, or know of their existence, and is entitled in equity to the benefit thereof as against B who surrendered the same to A without his knowledge or consent.

Vail v. Foster, 4 Comst. 312.

Higgins v. Wright, 43 Barb. 461.

Merchants & Mfrs. Bank v. Cumings,
149 N. Y. 364.

Cowen's Treatise, Vol. 1 (5th ed.), sec.
457.

219.

A can only recover \$5,000, the amount he paid. He is entitled to indemnity only, and cannot recover the amount extinguished by his payment.

Bonney v. Seely, 2 Wend. 482.

220.

The policy was valid, nor was it a wager policy.

"Where a person takes out a policy of insurance upon his own life, and the amount is made payable to another having no interest in the life * * * the beneficiary may hold and enforce the policy, if it was valid in its inception and was procured in good faith."

Olmstead v. Keyes, 85 N. Y. 593.

Steinback v. Diepenbrock, 158 N. Y. 24.

Classey v. Met. Life Ins. Co., 84 Hun,
350.

221.

The company is liable. A deed absolute in form, but in fact given as security for a debt, is a mortgage by operation of law (*Mooney v. Byrne*, 163 N. Y. 91), and is not such a change in the title or possession of the subject of insurance as would avoid the policy.

Barry v. Hamburg Bremen Fire Ins. Co.,
110 N. Y. 1.

222.

The transaction was a bailment, and A can recover his property from the sheriff.

A was to receive from the miller 2,000 barrels of flour ground out of the identical wheat delivered to him for that purpose.

Where a contract is made with a manufacturer to deliver to him raw materials to be returned manufactured, the contract is one of bailment and not of sale, and the title to the article remains when manufactured in the original owner.

Foster v. Pettibone, 7 N. Y. 433.

Mack v. Snell, 140 N. Y. 193.

223.

Yes. By proving that the fire occurred through the negligence of the warehouseman; he is liable under those circumstances notwithstanding his receipt which exempted him from liability for loss or damage to the stored goods by fire.

Germania Fire Ins. Co. v. M. C. R. R. Co., 72 N. Y. 90.

Claffin v. Meyer, 75 N. Y. 260.

Stewart v. Stove, 127 N. Y. 506.

Canfield v. B. & O. R. R. Co., 93 N. Y.
536, 537.

224.

B can offset his claim for damages. There was an agreement that the watch cases which were *in esse* would be like the sample exhibited and that amounts in law to a "war-

ranty" which survives acceptance, with knowledge of the breach thereof.

Brigg v. Hilton, 99 N. Y. 517.

Fairbank Canning Co. v. Metzger, 118 N. Y. 260.

Zabriskie v. C. V. R. R. Co., 131 N. Y. 72.

Kent v. Friedman, 101 N. Y. 616.

Mack v. Snell, 140 N. Y. 203.

225.

A is entitled to bring an action immediately for the breach without tendering delivery.

Windmuller v. Pope, 107 N. Y. 674.

"When the vendee of personal property, under an executory contract of sale, refuses to complete his purchase, the vendor may keep the article for him and sue for the entire purchase price; or he may keep the property as his own and sue for the difference between the market value and the contract price; or he may sell the property for the highest sum he can get, and after crediting the net amount received, sue for the balance of the purchase money."

Ackerman v. Rubens, 167 N. Y. 408.

Van Brocklen v. Smeallie, 140 N. Y. 70.

226.

Judgment should be reversed as to B. In tort the admissions of one joint tortfeasor are not admissible against the other, unless conspiracy has been established.

Wilson v. O'Day, 5 Daly, 354.

De Benedetti v. Manchin, 1 Hilt. 213.

Carpenter v. Sheldon, 5 Sandf. (Sup. Ct.) 77.

1 Encyc. Evid. 589.

227.

The Court should direct the jury to acquit. A child of the age of seven years and under the age of twelve years is

presumed to be incapable of crime, but the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him, and to know its wrongfulness. The district attorney failed to make proof of capacity.

Penal Law (Laws 1909, chap. 88), sec. 817.

Stone v. Dry Dock, etc., R. R. Co., 115 N. Y. 109, 161 N. Y. 323.

228.

The objection was sustained.

It does not appear that the wife's statement was made at the time of the assault, and if it was made thereafter, it would not be a part of the *res gestæ*. Her dying declaration is not admissible. Such declarations are admissible only in homicide cases under certain restrictions.

Spatz v. Lyons, 55 Barb. 476.

229.

Objection overruled.

"Where a party calling a witness is surprised by testimony contrary to his expectations, he may be permitted to interrogate the witness in respect to previous declarations made by the latter inconsistent with his testimony, for the purpose of probing his recollection, and by showing the witness that he is mistaken, inducing him to correct his evidence, or by recalling to his mind the statements previously made, drawing out an explanation of his apparent inconsistency, and also for the purpose of showing the circumstances which induced the party to call him, and such inquiries will not be excluded simply because they may result unfavorably to the witness. But where the sole effect of an affirmative answer to a question asked by a party to his own witness will be to discredit the witness, it is properly excluded."

Bullard v. Pearsall, 53 N. Y. 230.

See also 1 Greenleaf Ev., sec. 444.

Putnam v. U. S. 162, U. S. 687.

230.

No. The proof was competent, not to show special damages, as none had been alleged, but as bearing upon the hurtful tendency of the libel and the general damage.

Morey v. M. J. Assoc., 123 N. Y. 207.

Gates v. N. Y. Recorder Co., 155 N. Y.

232.

231.

By attachment.

Andrews v. Andrews, 2 Johns. Cases, 109.

Jackson v. Mann, 2 Caines, 92.

People v. Vermilyea, 7 Cow. 108.

Matter of O'Toole, 1 Tuck. Surr. 39.

He may also be punished as for a criminal contempt, or indicted for misdemeanor.

Code Crim. Proc., secs. 611, 617, 618, 619.

Judiciary Law (Laws 1909, chap. 35),
secs. 750, 751, 752, 754.

Penal Law, sec. 600 (Laws 1909, chap.
88).

232.

Robbery in the first degree. Although the purse was obtained by stealth and not by force, B was at the time armed with a dangerous weapon and used the same to retain possession of the stolen property.

Penal Law, secs. 2121, 2124 (Laws
1909, chap. 88).

233.

Yes. The burden of proof was upon the prosecution to establish the guilt of the prisoner beyond a reasonable doubt, and the charge of the Court as made was erroneous.

In case of a reasonable doubt whether his guilt is satisfactorily shown, the prisoner is entitled to an acquittal.

Code Crim. Proc., sec. 389.

People v. Riordan, 117 N. Y. 73.

People v. Schryver, 42 N. Y. 1.

People v. Guidici, 100 N. Y. 509.

Poole v. People, 80 N. Y. 646.

Miles v. U. S., 103 U. S. 304.

234.

The company was not liable. The act of the conductor in detaining the passenger was willful misconduct, but in so doing, he was not acting in the course of his employment.

Mulligan v. N. Y. & R. B. R. Co., 129 N. Y. 506.

Palmeri v. M. R. Co., 133 N. Y. 261.

McLeod v. N. Y. C. & S. L. R. R. Co., 72 App. Div. 119.

Nowack v. M. St. R. Co., 166 N. Y. 440.

Hart v. M. St. R. Co., 65 App. Div. 495.

Collins v. Butler, 83 App. Div. 18.

235.

A could not have prevented judgment. The owner of personal property which has been stolen by another may waive the tort and sue the latter for and recover its value upon an implied contract of sale. Where, however, the owner thus elects to treat the transaction as a sale, the title to the property passes to the wrongdoer. Thus when A presented the horse to C, it was his property, and he had a lawful right so to do, and it was immaterial that C knew the facts concerning A's title. C has a defense to the action in replevin and can retain the horse as against the original owner.

Terry v. Munger, 121 N. Y. 161.

Russell v. McCall, 141 N. Y. 449.

Disbrow v. Westchester H. Co., 164 N. Y. 424.

Starr Cash Car Co. v. Reinhart, 2 Misc. 116.

McNutt v. Hilkins, 80 Hun, 235.

236.

Judgment for B. A claim or demand to recover damages for a personal injury is not assignable.

Personal Property Law (chap. 45, Laws 1909), sec. 41.

237.

The will is invalid under the provisions of Decedent Estate Law, section 19, chapter 18, Laws 1909, because it was executed within two months of testator's death.

Stephenson v. Short, 92 N. Y. 433.

Hollis v. Drew, 95 N. Y. 166.

Matter of Lampson, 161 N. Y. 511.

238.

The will of the father, under the circumstances, was not revoked by the birth of the child born after its execution. The after-born child being unprovided for by any settlement, nor in any way mentioned in the will, is entitled to succeed to the same portion of his father's estate as would have descended or been distributed to him if such parent had died intestate, and he is entitled to maintain an action against the legatees or devisees, as the case requires, to recover his share of the property.

Redfield on Surrog. Prac. (6th ed.),
sec. 229, p. 192.

Code Civ. Proc., sec. 2727.

Decedent Estate Law (chap. 18, Laws
1909), sec. 28.

239.

A was a married infant of the age of twenty years when she made her will of both real and personal estate. She was competent to make a will of personal property at the time, but not of real property, so that her will was valid as to personal estate, and invalid as to the realty, as to which she died intestate.

B takes the \$10,000 in personal estate under the will. C takes nothing. A, having died intestate as to the real estate, leaving a father, and the inheritance not having come to the intestate on the part of the mother, it goes to her

father, subject to a tenancy by the curtesy in the intestate's husband, issue of the marriage having been born alive.

Decedent Estate Law (chap. 18, Laws 1909), secs. 81-84.

Redfield's Surrogate Prac. (6th ed.), sec. 208, p. 164.

Hatfield v. Sneden, 54 N. Y. 280.

Kent's Com., vol. 4, p. *506.

240.

The equitable title was in B at the time of the fire and the loss falls on him,

Equity regards that as done which ought to have been done.

Vol. XI Encyc. of Law (2d ed.), pp. 181, 182.

Goldman v. Roseberg, 116 N. Y. 85.

127 App. Div. 92, affd., 197 N. Y. 168.

241.

A's claim is good. X took his assignment of the mortgage, subsequent to the prior equity of A arising out of the agreement between A and B. There was no estoppel; the agreement as to priority was valid and X stood in the place of his assignor.

Collier v. Miller, 137 N. Y. 332.

242.

Put the claim in judgment, issue execution thereon, have it returned unsatisfied, and then begin a creditor's action to set aside the deed as fraudulent and void as against your client.

Vide cases generally, Vol. 4 Abb. Cyc. Dig., p. 689, title "Creditor's Suit."

243

Valid. "If the directors shall not be elected on the day designated in the by-laws, or by law, the corporation shall not for that reason be dissolved; but every director shall continue to hold his office and discharge his duties until his successor has been elected."

Gen. Corp. Law, sec. 28, chap. 28, Laws 1909.

Geneva Min. Springs Co. v. Coursey, 45 App. Div. 268.

Beardsley v. Johnson, 121 N. Y. 224.

Phila., etc., v. Hotchkiss, 82 N. Y. 474.

244.

No. The X corporation was not in existence after the merger; he should have sued the consolidated or Z corporation.

Copp v. Colorado Coal & Min. Co., 29 Misc. 109.

245.

As a judgment creditor, A had the right to inspect and take extracts from the "stock-book" of the corporation, which contained the names, alphabetically arranged, of all persons who are stockholders of the corporation, showing their places of residence, the number of shares of stock held by them respectively, the time when they respectively became the owners thereof and the amount paid thereon.

He can compel the corporation to produce such book by mandamus.

People ex rel. Clason v. Nassau Ferry Co., 86 Hun, 129.

Stock Corp. Law, sec. 32, Laws 1909, chap. 61.

246.

A should not commence his action for divorce without additional testimony.

"In actions for divorce on the ground of adultery, the confessions of the defendant are always admissible in evidence, but to avoid the danger of collusion, the Court before granting the decree will require such corroboration of the confession as to remove all just suspicion of collusion. When that is satisfactorily done the confessions become a sufficient basis for a judgment for divorce."

Madge v. Madge, 42 Hun, 524.

Sigel v. Sigel, 20 N. Y. Supp. 377.

247.

The infant is entitled to sue for and recover the reasonable value of his services.

The express contracts of an infant are voidable at his election, but the adult who makes the agreement with him is bound thereby unless the infant or his guardian regard it as a nullity. If an infant agrees to work for a specified time, and for a specified amount, he may leave before the expiration of the time without cause, and recover for the value of his services for the time he labored, without any deduction for damages for his breaking his contract, and that recovery may be for an amount beyond the contract price, if the evidence shows that his services were worth more.

Cowen's Treat., vol. 2, secs. 1013, 1014, 1018.

Whitmarsh v. Hall, 3 Denio, 375.

Gates v. Davenport, 29 Barb. 160.

248.

To the husband. It will be observed that the services were rendered in and about the husband's house, and while the wife was engaged in her household duties. She was engaged in no other occupation, rendered them with the knowledge and consent of her husband, and made no personal claim for compensation therefor.

The husband, under the circumstances disclosed, is entitled to his common-law right and can avail himself of a profit or benefit from the services of his wife.

Porter v. Dunn, 131 N. Y. 314.

249.

The office of overseer of the poor of the village of X, not being a constitutional office, can be abolished by the legislature during the incumbency of an occupant (People ex rel. v. Whitlock, 92 N. Y. 191; Koch v. Mayor, 152 N. Y. 72; People ex rel. v. Peck, 73 App. Div. 89), but the act in question in that regard is void in that it is contrary to the provisions of section 16, article III of the Constitution which reads that "No private or local bill, which may be passed by the legislature, shall embrace more than one subject and that shall be expressed in the title."

People ex rel. Corscadden v. Howe, 177 N. Y.

250.

The act is valid.

It is competent for the legislature by a validating act to cure irregularities in assessment proceedings so as to validate retrospectively any proceedings which it might have authorized in advance.

It was within the legislative power to have declared in the act authorizing the local improvement that one insertion in one newspaper was a sufficient advertisement for bids to do the work in question, and having that power in the first instance it can declare an assessment valid that was based on such a publication, although the original act called for more.

Vol. VI Encyc. of Law (2d ed.), p. 940.

Hatzung v. Syracuse, 92 Hun, 203.

Tift v. Buffalo, 82 N. Y. 204.

People ex rel. Kilmer v. McDonald, 69 N. Y. 362.

W. I. B. Co. v. Town of Attica, 119 N. Y. 204.

251.

..... COURT,COUNTY.

TITLE.

The defendant, for answer to the complaint of the plaintiff in the above-entitled action, alleges, that before this action, and on the day of, 190., this defendant paid to the plaintiff dollars in full payment of the account for goods sold and delivered, mentioned and described in the complaint herein.

A B,

Attorney for Defendant.

Office and Post-office Address,

....., N. Y.

Payment is an affirmative defense and must be specifically pleaded in the answer; it cannot be proven under a general denial in the case stated.

McKyring v. Bull, 16 N. Y. 297.

Gabay v. Doane, 77 App. Div. 416.

Lent v. N. Y. & M. R. Co., 130 N. Y. 504, 511.

252.

Mandamus. Apply for a peremptory writ of mandamus directed to the public board to compel action on its part. The proceeding is provided for and regulated by secs. 2067 *et seq.* of the Code of Civil Procedure.

People ex rel. Harris v. Commissioners, 149 N. Y. 26.

People ex rel. Grannis v. Roberts, 163 N. Y. 70.

People ex rel. Linton v. Brooklyn H. R. Co., 69 App. Div. 549.

253.

Bring an action in the usual form for rent against the president or treasurer of the club. It is an unincorporated

association of seven or more members having a full set of officers. The procedure is provided for in the Code of Civil Procedure, secs. 1919 *et seq.*

254.

A takes all. His execution was delivered first to the sheriff. Personal property, subject to levy, is bound by the execution from the time of the delivery thereof to the proper officer to be executed, and the one first delivered has preference in payment, notwithstanding that a levy is first made by virtue of an execution subsequently delivered.

Code Civ. Proc., secs. 1405, 1406.

255.

Yes. "The mere bringing of a former action upon the same state of facts does not necessarily preclude a party from bringing a second action, and the institution by a party of a fruitless action, which he has not the right to maintain, will not preclude him from asserting the rights he really possesses."

McNutt v. Hilkins, 80 Hun, 235.

256.

Yes. A defendant in order to avail himself of the defense of the statute of limitations is required in all cases to plead it.

Code Civ. Proc., sec. 413.

Minzesheimer v. Bruns, 1 App. Div.
324.

Hulbert v. Clark, 128 N. Y. 295.

Sage v. Culver, 147 N. Y. 241.

257.

The entire crop belongs to the landlord, who is not liable for the value of the seed.

The tenant knew that his lease expired on April 1, 1902, and he planted the wheat knowing it could not be harvested until after the expiration of his lease.

Reeder v. Sayre, 70 N. Y. 180.

258.

The deed is valid as to the two first life estates, viz., those of B and C. On the death of C, G takes the fee. The estates subsequent to those of the two persons first entitled thereto are void, and on the death of those persons, the remainder takes effect in the same manner as if no other life estates had been created.

Real Property Law (chap. 52, Laws 1909), sec. 43.

259.

D's unrecorded mortgage takes precedence over A's deed. A had actual notice of D's mortgage, and that takes the place of the notice presumed by the recording acts.

Real Property Law (chap. 52, Laws 1909), sec. 291, Gerard on Titles to Real Estate (5th ed.), pp. 701-715.

260.

A wins. "A common carrier is bound to exercise reasonable care and prudence in the transportation of property, and is liable for loss resulting from a failure in this respect, although by his contract the transportation is at 'the owner's risk.'"

Canfield v. B. & O. R. R. Co., 93 N. Y. 532.

Kenney v. N. Y. C. & H. R. R. Co., 125 N. Y. 425.

261.

Yes; C can recover.

"Where one party proposes by mail a contract with another residing at a distance, and the latter accepts it and deposits his acceptance in the post-office, addressed and to be transmitted to the former, the contract is complete.

"The party may make it a condition that the proposed contract shall not be obligatory upon him until he receives notice of its acceptance, or unless he receives such notice by a spe-

cified time; but if he do not, the contract is binding on him from the time the acceptance is deposited for transmission to him by mail, although he never receive it."

Vassar v. Camp, 11 N. Y. 441.

Watson v. Russell, 149 N. Y. 391.

C. P. I. Co. v. A. Ins. Co., 127 N. Y. 618.

262.

B and C can compel A to account to the firm for the value of the lease taken in his own name, which inures to the benefit of the firm.

"One member of a copartnership cannot during its existence, without the knowledge of his copartners, take a renewal lease for his own benefit, of premises leased by the firm, upon which it has made valuable improvements, and by the joint efforts of the members made the good will valuable and enhanced the rental value of the premises, and this although the term of the renewal lease does not begin until after the copartnership has expired by its own limitations."

Mitchell v. Reed, 61 N. Y. 123.

Britton v. Ferrin, 171 N. Y. 244.

Robinson v. Jewett, 116 N. Y. 51, 52.

Butler v. Prentiss, 158 N. Y. 49.

263.

Judgment for the creditor. C is liable as a partner for the reason that he was interested in the profits of the business as profits and not as a means of compensation.

Leggett v. Hyde, 58 N. Y. 272.

Orvis v. Curtiss, 157 N. Y. 657.

Magovern v. Robertson, 116 N. Y. 65.

First Nat. Bank v. Gallaudet, 122 N. Y. 655.

264.

C wins. B by taking an assignment of all the maker's property, before maturity, for the express purpose of meeting the note, or for his protection against the same, impliedly

waives his right to a notice of dishonor upon the ground that he had obtained everything which notice was intended to enable him to obtain.

Merchants' Bank v. Griswold, 7 Wend.
165, 166.

Eaton & Gilbert on Com. Paper, p. 523,
and cases cited.

265.

B wins.

"Where the holder of a check procures it to be accepted or certified, the drawer and all indorsers are discharged from liability thereon."

Nego. Inst. Law (chap. 43, Laws 1909),
sec. 324.

Eaton & Gilbert on Com. Paper, p. 635.

First Nat. Bank v. Leach, 52 N. Y. 350.

Thomson v. Bank, 82 N. Y. 1.

266.

No, the defense is not good.

It was A's duty to have disclosed, at the time the property was knocked down to him, or when he paid the 10 per cent., the name of his principal, not having done so he is personally liable on the contract.

McComb v. Wright, 4 Johns. Ch. 659.

Cobb v. Knapp, 71 N. Y. 348.

McClure v. Cent. Trust Co., 165 N. Y.
110, 128.

De Remer v. Brown, 165 N. Y. 410.

267.

A can recover. C had no actual authority to collect the note, and its mere possession unindorsed did not vest him with apparent authority nor authorize payment to him.

Doubleday v. Kress, 50 N. Y. 410.

Wangner v. Grimm, 169 N. Y. 429.

268.

Demurrer sustained.

The bank was not privy to the fraud and Roe was not discharged thereby.

Coleman v. Bean, 1 Abb. Ct. App. Dec.
394.

269.

A is right and C is liable as surety for the rent of the extended term.

The holding over was continuous and under the lease, the stipulated rent of which C guaranteed.

Dufau v. Wright, 25 Wend. 636.

Rice v. Loomis, 139 Mass. 302, 1 N. E.
548.

270.

Judgment for the X Company.

The fire having occurred through the wrongful and criminal act of B, A had the primary right of indemnity against him or against the insurance company and could collect of either, but having first collected of B, he cannot have a second satisfaction of the insurance company.

Clement on Fire Insurance, p. 363.

16 Am. & Eng. Encyc. of Law (2d ed.),
p. 841.

Connecticut Fire Ins. Co. v. Erie R. R.
Co., 73 N. Y. 399.

271.

A wins. The insurance company probably defended on the ground that the policy was a wager policy; but it was not. A had an insurable interest in the life of B at the time of the taking out of the policy to the amount of \$20,000, the value of his bonds then in B's possession, which B might lose, steal or destroy. Under the circumstances it

was not necessary that A should have been damnified by B's death.

Steinback v. Diepenbrock, 158 N. Y. 30.
Ferguson v. Mass. Mut. Life Ins. Co., 32
 Hun, 306, 311; *affd.*, 102 N. Y. 647.
Cook on Life Insurance, pp. 101, 102,
 103.

272.

A wins. Bailor and bailee.

The contract was entire, to saw the 100 logs, and then each was to have half of the boards sawed out of the same. Until the contract was completed the title to the boards and logs unsawed remained in A. When B sold the boards in question he was guilty of conversion and liable to A for their value.

Pierce v. Schenck, 3 Hill, 28.
Mack v. Snell, 140 N. Y. 193.

273.

Judgment for B. Bailor and bailee.

The moment A drove the horse beyond the village of C, he transcended his contract of hire and became liable for all damages absolutely, although caused by inevitable accident or without his fault.

7 *Am. & Eng. Encyc. of Law* (2d ed.),
 p. 312.
 3 *idem.*, p. 753; 5 *Cyc.* 176.

274.

To B. The title to the horse passed to B on delivery; the act of returning the same within the ten days was a condition subsequent, which might, if performed, have defeated the title vested, but as it was not duly exercised B forfeited the right and the sale became absolute. C had the right to levy and sell the horse under the circumstances narrated.

Costello v. Herbst, 18 Misc. 179.
 21 *Am. & Eng. Encyc. of Law* (1st ed.),
 p. 647.

275.

Judgment for the jeweler. On A's refusal to give his note as agreed, the sale became absolute and the debt for the same became due forthwith.

Corlies v. Gardner, 2 Hall (N. Y.), 345.
21 Am. & Eng. Encyc. of Law (1st ed.), 639.

276.

The Court should exclude the evidence. What A heard the bystanders say after the accident, and in the absence of the flagman, was clearly hearsay and irrelevant.

Felska v. N. Y. C. R. R. Co., 152 N. Y.
339.

277.

The Court should exclude the evidence. It does not appear therein that the declarant was conscious of impending death, and was without expectation or hope of recovery. The fact that the attending physician knew that A was about to die, does not establish the condition of A's mind or that he had given up all hope of life when he made the statements.

Stephen's Dig. Law of Ev. (Beers' N. Y.
ed.), arts. 26, 97, pp. 131, 372.
People v. Chase, 79 Hun, 296; affd., 143
N. Y. 669.

278.

The testimony should be admitted. The customer having expressly referred the merchant to the cartman for information in regard to the matter in dispute, is bound by the latter's declarations in the same manner and to the same extent as if they were made by himself.

1 Greenleaf's Ev., sec. 182.
1 Encyc. of Ev., p. 561.
Stephen's Dig. of Law of Ev. (Beers' N.
Y. ed.), art. 19, p. 113.
Lehman v. Frank, 19 App. Div. 442.

279.

On proof by your client that he has no present recollection of the items, independent of the memorandum, and that the memorandum is correct and was made by him when the transaction was fresh in his mind, the same can be used to refresh his memory, in connection with and as auxiliary to the oral testimony of the witness.

Cowen's Treat., vol. 2 (5th ed.), sec. 1474.

Stephen's Dig. of Law of Ev. (Beers' N. Y. ed.), art. 136, p. 461.

Halsey v. Sinsebaugh, 15 N. Y. 485.

Marcy v. Shults, 29 N. Y. 346, 351.

Howard v. McDonough, 77 N. Y. 592.

Wise v. Phoenix, 101 N. Y. 637.

Russell v. Hudson R. R. Co., 17 N. Y. 134.

People v. McLaughlin, 150 N. Y. 392.

Nat. Ulster Co. Bank v. Madden, 114 N. Y. 284.

Wilson v. Kings Co. E. R. R. Co., 114 N. Y. 498.

280.

The objection should be sustained. The slander consisted in stating generally that the plaintiff was a thief, and evidence of general reputation in that regard is alone competent; defendant cannot prove specific acts under the circumstances stated.

1 Greenleaf on Ev., sec. 55.

Hilton v. Carr, 40 App. Div. 490, 493.

Hart v. McLaughlin, 51 App. Div. 413.

People v. Greenwald, 108 N. Y. 301.

281.

Yes. The previous expression or formation of an opinion or impression by a juror in reference to the guilt or innocence of the defendant or a present opinion or impression in reference thereto, is not a sufficient ground of challenge

for actual bias, to any person otherwise legally qualified, if he declare on oath that he believes that such opinion or impression will not influence his verdict, and that he can render an impartial verdict according to the evidence, and the Court is satisfied that he does not entertain such a present opinion or impression as would influence his verdict.

Endeavor by examination of the juror to have him declare himself within that rule.

Code Crim. Proc., sec. 376.

282.

A was guilty of assault in the second degree. He pointed a loaded pistol at complainant, who was at the time within shooting distance, with intent to do bodily harm.

Penal Law, sec. 242 (Laws 1909, chap. 88).

People v. Conner, 53 Hun, 353.

People v. McKenzie, 6 App. Div. 199.

People v. Ryan, 55 Hun, 214.

283.

Yes. Upon the trial of an indictment a prisoner may be convicted of the crime charged therein or of a lesser degree of the same crime. Larceny is an element of robbery, which is but larceny by force, violence or fear, and the jury had the power to convict of larceny from the person if it saw fit so to do.

Murphy v. People, 3 Hun, 114.

2 Bish. Crim. Law (8th ed.), sec. 1156.

Penal Law, secs. 610, 2120 (Laws 1909, chap. 88).

284.

Although the person injured was a trespasser, he was not an outlaw who could be wilfully killed or injured. The railroad company owed him the obligation not to injure him by active misconduct or wantonness; it must not be grossly negligent, other than that the railroad company owed him no duty of care or vigilance. The question assumes that the presence of the trespasser was unknown, and could not have been reasonably anticipated, otherwise the railroad company

would be required to exercise reasonable care to prevent injury.

Vide 21 Am. & Eng. Encyc. of Law
(2d ed.), 472.

Sterger v. Van Sicklen, 132 N. Y. 499.

Walsh v. F. R. Co., 145 N. Y. 301, 183
N. Y. 390, 183 N. Y. 67; 131 App.
Div. 885, 140 App. Div. 687, 140
App. Div. 341, 198 N. Y. 108, 109.

285.

The law does not fix any arbitrary period (in civil actions) when an infant is deemed capable of exercising judgment and discretion, that is, when it becomes *sui juris*. "It depends upon many things, such as natural capacity, physical conditions, training, habits of life and surroundings. These and other circumstances enter into the question. It becomes, therefore, a question of fact for the jury where the inquiry is material," as it does in this case, the infant being seven years of age.

Stone v. Dry Dock, etc., 115 N. Y. 109,
110.

Tucker v. N. Y. C., 124 N. Y. 316.

286.

A cannot recover. B was under no legal obligation to disclose his special knowledge as to the whereabouts of the lost horse; he was under no special obligation by confidence reposed or otherwise, and had no legal relation either to A or to the animal. He said or did nothing to mislead A, who sold at his own risk, and cannot recover.

Bench v. Sheldon, 14 Barb. 66.

287.

Yes. The widow was not put to her election and was entitled to dower in addition to the provisions made for her in the will.

"Dower is never excluded by a provision for the wife except by express words or necessary implication. Where there are no express words there must be on the face of the will a demonstration of the intent of the testator that the

widow shall not take both dower and the provision. Such demonstration is furnished only where there is a clear incompatibility arising on the face of the will, between a claim of dower and a claim to the benefit of the provision. The intention to put the widow to an election between dower and the provision may not be inferred from the extent of the provision."

Konvalinka v. Schlegel, 104 N. Y. 125.

Kimbel v. Kimbel, 14 App. Div. 570.

Closs v. Eldert, 30 App. Div. 339.

Matter of Grotrian, 30 Misc. 23.

Matter of Gordon, 172 N. Y. 25.

Horstman v. Flege, 172 N. Y. 381.

288.

The grandchildren born before the death of A take the entire estate, each one-quarter, to the exclusion of the grandchild born after his death. Title vested at testator's death to those then in being.

Doubleday v. Newton, 27 Barb. 431.

289.

B, as an heir-at-law and person interested in the probate of the will, may bring an action in the Supreme Court for the county in which probate was had, to determine the validity or invalidity of the probate. The action is triable by a jury and must be commenced within two years after the will has been admitted to probate, except that persons within the age of minority, of unsound mind, imprisoned or absent from the State, may bring such action two years after such disability has been removed.

Code Civ. Proc., sec. 2653a.

290.

No. A cannot recover. He knew that the stock had reached \$150 a share, the price at which he had instructed his brokers to sell, who told him at that time that they had not sold, for the reason that the market looked strong and they thought the stock would reach a higher price. The

principles of natural justice required A at that time to have spoken concerning the broker's determination to hold for a higher price and to have forbidden it if he did not approve. He could not wait events to determine whether the broker's course would result advantageously or otherwise and then speak and make his election. He is now estopped. "He who has been silent as to his alleged rights when he ought, in good faith, to have spoken, shall not be heard to speak when he ought to be silent."

Vol. XI Am. & Eng. Encyc. of Law (2d ed.), pp. 427, 428.

Hope v. Lawrence, 50 Barb. 258.

291.

No; the action is in affirmance of an unlawful contract. "A court of equity will not determine the respective rights and interests of persons arising out of an unlawful agreement, but will leave the parties where it finds them in all cases where the action is in affirmance of such an agreement."

Unckles v. Colgate, 148 N. Y. 529.

292.

If the injured person was induced to settle his cause of action by reason of the fraud or deceit of the attorney of the railroad company, he can bring an action in equity to rescind the contract, but the court will require the *status quo* to be restored before relief will be granted. He will be compelled to pay back what he received on the settlement, or tender it and keep the tender good. "He who seeks equity must do equity."

Vandervelden v. Chicago & N. W. Ry. Co., 61 Fed. Rep. 54.

Vol. 11 Am. & Eng. Encyc. of Law (2d ed.), p. 160.

293.

The city has no remedy; the contract was *ultra vires* and unexecuted upon both sides.

“Contracts of corporations are *ultra vires* when they involve adventures outside of and not within the scope or powers given by their charter. The defense of *ultra vires* is available to the corporation in all cases of executory contracts, unless it would defeat justice or accomplish a legal wrong.”

Jemison v. C. S. Bank, 122 N. Y. 135.

Bath Gas Light Co. v. Claffy, 151 N. Y. 31.

Vought v. East Bldg. & Loan Assn., 172 N. Y. 518.

294.

No; the attorney will not recover. The contract was fraudulent and void under the statute, which declares that “when the directors of any corporation for the first year of its corporate existence shall hold over and continue to be directors after the first year, because of their neglect or refusal to adopt the by-laws required to enable the stockholders to hold the annual election for directors, all their acts and proceedings while so holding over, done for and in the name of the corporation, designed to charge up on it any liability or obligation for services of any such director, or any officer, or attorney or counsel appointed by them, and every such liability or obligation shall be held to be fraudulent and void.”

Stock Corp. Law (Laws 1909, chap. 61),
sec. 27.

295.

By applying to an Appellate Division of the Supreme Court, held in the Department, in which it is proposed to construct the road, for the appointment of three commissioners to determine whether such railroad ought to be constructed and operated.

Railroad Law (Laws 1910, chap. 481),
sec. 174.

296.

The wife has no rights under the circumstances stated. The money which the wife saved without her husband's knowledge out of the money which he furnished to her for the sole purpose of paying the running expenses of the house, which was the husband's obligation, was and remained his property, and the horse, carriage and harness which she bought therewith were his property also and subject to levy and sale under an execution against him.

Aaronson v. McCauley, 46 St. Rep. 564.

297.

A and B, the husband and wife, were tenants by the entirety of the real estate; this tenancy is founded upon the marital relation, and was severed by the divorce *a vinculo*, and each thereupon took a fee in one-half share of the real estate as tenants in common.

Stelz v. Shreck, 128 N. Y. 263.

Jooss v. Fey, 129 N. Y. 201.

B has no dower in her husband's share, the divorce having been granted to the husband.

Code Civ. Proc., sec. 1760.

On the death of A his son, D, takes the fee of his father's one-half, subject to the dower right of his mother, C.

Decedent Estate Law (chap. 18, Laws 1909), sec. 81.

298.

The charge is not correct. It does not state the rule governing the husband's liability for the torts of his wife of the character set forth in the question. It is statutory and as follows:

"Her husband is not liable for such acts (torts named including injuries to the person) unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be presumed, but must be proved."

Dom. Rel. Law (Laws 1909, chap. 19),
sec. 57.

299.

The entire assets must be first applied to the payment of its outstanding bills.

"In case of the insolvency of any bank or banking association, the bill holders thereof shall be entitled to preference in payment, over all other creditors of such bank or association."

N. Y. Const. of 1894, art. VIII, sec. 8.

300.

The appellant succeeds. The jury, which was the exclusive judge of all questions of fact, acquitted the prisoner, and the presiding judge had no power to set the verdict aside as against the weight of evidence, nor could he be again tried for that would put him twice in jeopardy.

Code Crim. Proc., secs. 419, 420.

Penal Law, sec. 32 (Laws 1909, chap. 88).

N. Y. Const., art. 1, sec. 6.

People v. Dowling, 84 N. Y. 478.

People v. Cignarale, 110 N. Y. 27.

People v. McCarthy, 110 N. Y. 315.

301.

..... COURT.

TRIAL DESIRED IN COUNTY.

A, Plaintiff,

against

B, Defendant.

} *Summons.*

To the above named defendant:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your

failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated,, 190..

., Plaintiff's Attorney,
Office address,, N. Y.
Post Office address,, N. Y.
(Code Civil Procedure, sec. 418.)

Indorsement upon summons:

"According to the provisions of section . . . of chapter 24 of the Laws of 1910, known as the Forest, Fish and Game Law" (or as the case may be).

The summons is in the usual form, except "in an action to recover a penalty or forfeiture, given by a statute, if a copy of the complaint is not delivered to the defendant with a copy of the summons, a general reference to the statute must be indorsed upon the copy of the summons so delivered, in the following form: 'According to the provisions of,' etc.; adding such a description of the statute, as will identify it with convenient certainty, and also specifying the section, if penalties or forfeitures are given, in different sections thereof, for different acts or omissions."

(Code Civil Procedure, sec. 1897.)

302.

No. After a partnership has been dissolved by mutual consent or otherwise, a member of the partnership can compound for a partnership debt and be exonerated therefrom by a release of the indebtedness or other instrument exonerating him therefrom executed by the creditor to the compounding debtor. Such an instrument does not impair the creditor's right of action against the other members of the firm or his right to take any proceedings against the latter. B, however, may make any defense or counterclaim or have any other relief against X to which he would have been entitled, if the composition had not been made, and may require A to contribute his ratable proportion of the partnership debts, as if he had not been discharged.

Debtor and Creditor Law (Laws 1909,
chap. 17), secs. 230, 231, 232, 233.

303.

B's plea is not good. The demands mentioned were reciprocal, and the accounts were "mutual, open and current."

"In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item, proved in the account on either side."

(Code Civil Procedure, sec. 386.)

The six years' limitation (Code Civil Procedure, sec. 382, subd. 1) began to run from January 1, 1899, the date of the last item in A's account. The action was commenced January 1, 1904.

304.

Twenty days after the publication for six weeks is complete.

"For the purpose of reckoning the time within which the defendant must appear or answer, service by publication is complete upon the day of the last publication, pursuant to the order; and service made without the state is complete upon the expiration thereafter of a time equal to that prescribed for publication."

Code Civil Procedure, sec. 441.

Vide also section 440.

Market Nat. Bank v. Pacific Nat. Bank,
89 N. Y. 397.

305.

Defendant further answering said complaint, alleges that the plaintiff herein is not a corporation.

"In an action, brought by or against a corporation, the plaintiff need not prove, upon the trial, the existence of the corporation, unless the answer is verified, and contains an affirmative allegation that the plaintiff, or the defendant, as the case may be, is not a corporation."

(Code Civil Procedure, sec. 1776.)

306.

Apply to the court upon notice to both claimants for an order to substitute the claimant who has not sued, as the party defendant in the action in the place and stead of the railroad company and to discharge it from liability upon its paying into court the sum of money found. It is called "Interpleader by Substitution on Order" and is provided for by section 820 of the Code of Civil Procedure. An action of interpleader can also be maintained in certain cases. The cases are numerous. *Vide* generally:

Baltimore & Ohio R. R. Co. v. Arthur,
90 N. Y. 234.

Bassett v. Leslie, 123 N. Y. 396.

Hirsch v. Mayer, 165 N. Y. 236.

Bernstein v. Hamilton, 26 App. Div.
206.

Stevenson v. N. Y. Life, 10 App. Div.
233.

Wells v. National City Bank, 40 App.
Div. 498.

Beebe v. Mead, 101 App. Div. 500.

307.

"Where any building, which is leased or occupied, is destroyed or so injured by the elements, or any other cause as to be untenable, and unfit for occupancy, and no express agreement to the contrary has been made in writing, the lessee or occupant may, if the destruction or injury occurred without his fault or neglect, quit and surrender possession of the leasehold premises, and of the land so leased or occupied; and he is not liable to pay to the lessor or owner, rent subsequent to the time of the surrender."

Real Property Law (chap. 52, Laws
1909), sec. 227.

Fowler's Real Property Law (2d ed.),
p. 626.

308.

B is not liable. The landlord made no reply to the tenant's letter. He said nothing; nor did he notify the tenant that he

would hold him for the rent and that he would lease the premises for his benefit. He accepted surrender and relet on his own responsibility and cannot recover the rent thereafter accruing.

Underhill v. Collins, 132 N. Y. 269.

Gray v. Kaufman Dairy & I. C. Co., 162 N. Y. 388.

Crane v. Edwards, 80 App. Div. 333.

309.

B is liable for the rent. The tenant in possession of the demised premises wrongfully withheld the same from both A and B.

"It is the acceptance of a lease, not the acceptance or occupation of the premises, that creates the liability under a covenant to pay rent contained in the lease.

"The extent of the landlord's implied agreement is that he has a good title and can give a free and unincumbered lease for the term demised, and if the tenant is kept out of possession by the act of any party other than the landlord, *he must resort to his proper remedy to get possession under the lease.*"

Smith v. Barber, 96 App. Div. 236.

Mirsky v. Horowitz, 46 Misc. 257.

310.

Judgment for A. Contract void under the statute of frauds.

Personal Property Law, chapter 45,
Laws 1909 (sec. 31, subd. 6).

Bennett v. Hull, 10 Johns. 364.

311.

Judgment for vendor, under the rule that where a contract is made for the sale and delivery of specified articles of personal property, and the title does not pass to the vendee, the vendor is not liable if the property is destroyed by accident without his fault, so that delivery becomes impossible. The basis of this doctrine is, that there is an implied condition

in the contract itself, the effect of which is to relieve the party where, without his fault, performance becomes impossible.

Dexter v. Norton, 47 N. Y. 62.
 Kein v. Tupper, 52 N. Y. 550, 556.
 Goldman v. Rosenberg, 116 N. Y. 78.
 Stewart v. Stone, 127 N. Y. 500, 507.
 Lorillard v. Clyde, 142 N. Y. 456, 462.
 Herter v. Mullen, 159 N. Y. 38, 43.
 190 N. Y. 170.

312.

A was liable. By the agreement he had an interest in the profits as such, which were the result of the capital and industry in which the firm was engaged, and as to the creditors of the firm he was a partner and jointly liable for the partnership debts.

Leggett v. Hyde, 58 N. Y. 272.
 Manhattan Brass & Mfg. Co. v. Sears,
 45 N. Y. 797.
 Hackett v. Stanley, 115 N. Y. 625, 630.
 Magovern v. Robertson, 116 N. Y. 61, 65.
 Bank v. Gallaudet, 122 N. Y. 655.
 Orvis v. Curtiss, 157 N. Y. 657, 662.

313.

The exception was not well taken. Where a fraud is perpetrated by one of the members of a firm in the transaction or prosecution of a copartnership enterprise, they are all liable, although the others had no connection with, knowledge of, or participation in the fraud.

Chester v. Dickerson, 54 N. Y. 1.
 Parsons on Partnership, secs. 100, 102.
 Griswold v. Haven, 25 N. Y. 595.
 Strang v. Bradner, 114 U. S. 555.

314.

Judgment for C. The bonds when presented and transferred to A had no indorsement thereon by the payee and

hence were nonnegotiable. Nor was the person presenting them the apparent owner, and not being the apparent owner he could not give a good title even to a *bona fide* purchaser for value.

Colson v. Arnot, 57 N. Y. 253, cited in
Bank v. Bank, 170 N. Y. 65.

315.

Judgment for C. The reasons are, that as B had an opportunity to know what he signed, but relied upon the statement of A without examination, he was, as to a *bona fide* holder for value, bound by his act and estopped from claiming that he intended to sign an entirely different obligation. In other words, his negligence was no defense, and the burden was upon B of showing that he was guilty of no laches or negligence.

Chapman v. Rose, 56 N. Y. 137.
Dutchess Co. Mut. Ins. Co. v. Hachfield,
73 N. Y. 226.

316.

A should recover, as M had no authority either actual or apparent as agent of A to receive the principal due on the note, and as it was not indorsed, A was not bound by the action of M.

Doubleday v. Kress, 50 N. Y. 410.
Smith v. Kidd, 68 N. Y. 130.
Brewster v. Carnes, 103 N. Y. 556.
Crane v. Gruenewald, 120 N. Y. 274.
Central Trust Co. v. Folsom, 167 N. Y.
287, 285.

317.

A was entitled to judgment as B did not claim to own the stock, but only to be acting as agent, and as he had no authority, actual or apparent, to pledge the same, A was not estopped from asserting his title. While the transfer and power of attorney gave B an apparent ownership in case he had claimed title or an apparent authority to sell as agent,

it did not hold him out as authorized to make a loan or pledge the stock.

Bank v. Livingston, 74 N. Y. 223.

Talmage v. Third Nat. Bank, 91 N. Y. 533.

Shaw v. S. H. N. Co., 144 N. Y. 220, 224.

318.

C is not liable. He became surety for the firm of A and B. The death of B dissolved the firm and terminated his liability.

Manhattan Gas Light Co. v. Ely, 39 Barb. 174.

2 Pars. on Contracts, **, 19, 20.

Staats v. Howlett, 4 Denio, 559.

Vol. 27 Am. & Eng. Encyc. Law (2d ed.), 459.

Brandt, Suretyship, Guaranty (3d ed.), sec. 416; n. 3, sec. 438.

319.

B can recover from D one-half of the amount paid by him. At law a surety can recover of his co-surety only his proportion even when one of the sureties has become insolvent, but in a suit in equity against all the co-sureties, under proof of insolvency, the payment of the amount will be adjudged among the solvent parties in due proportion.

Easterly v. Barber, 66 N. Y. 433.

Kimball v. Williams, 51 App. Div. 616, 617.

Am. & Eng. Encyc. Law, Vol. 27, p. 485 (2d ed.).

320.

B can recover. He had an insurable interest in the house because his agreement with A was enforceable.

2 Parsons on Contracts, *438.

3 Kent's Com. *371.

Richards on Insurance, 34.

321.

The insurance company is liable. First, B had an insurable interest in the life of A. Second, the act stipulated against, death by his own hand or act, "voluntary or otherwise," is not against accidental death, but covers intentional death; suicide, whether sane or insane.

Penfold v. Universal Life Ins. Co., 85 N. Y. 317.

322.

The guest can recover. The innkeeper was an insurer of the safety of the property of his guest brought *infra hospitium*.

Hulett v. Swift, 33 N. Y. 571.

Wilkins v. Earle, 44 N. Y. 172.

Mowers v. Fethers, 61 N. Y. 38.

Adams v. N. J. Steamboat Co., 151 N. Y.

166. *Vide*, L. 1855, ch. 421, sec. 1, as amended L. 1897, ch. 305.

323.

The railroad company is liable. An accidental fire not caused by lightning is no excuse to a common carrier nor is it within the exception as an act of God.

2 Kent's Com., *602.

Miller v. Steam Navigation Co., 10 N. Y. 431.

Chamberlain v. The Western Trans. Co., 44 N. Y. 307.

Lamb v. Camden & Amboy R. R. Co., 46 N. Y. 286, 287.

324.

A is entitled to pay from C. B and C have no rights. Loss falls on B and C. Nothing remained to be done by the seller and delivery was complete.

Gerard v. Prouty, 34 Barb. 454 (affd. 41 N. Y. 619).

325.

B was entitled to recover. The express warranty survived acceptance.

“Where a machine has been delivered to the vendee under an executory contract of sale, with an express warranty of its capacity, without any agreement as to its retention or return, the vendee does not lose his right to recover damages for the breach of the warranty by returning the machine after discovering its inefficiency.”

Hooper v. Story, 155 N. Y. 171.

Miller v. Patch Mfg. Co., 101 App. Div. 22.

326.

The court should admit the evidence. Plaintiff had the right to contradict his own witness; contradiction is not impeachment.

“There is a difference between introducing evidence to establish a particular fact contrary to that testified to by a party’s witness and evidence introduced to impeach a witness, and we are persuaded that under the law the defendant had a right to contradict the plaintiff in regard to the material facts in this case, although he has weakened his case by bringing out the evidence of the plaintiff under his assurance that she was worthy of belief. (See 1 Greenleaf Evidence (13th ed.), sec. 443; Hunter v. Wetsell, 84 N. Y. 549, 556, and authorities there cited; Becker v. Koch, 104 N. Y. 394, 401, and authorities there cited.)”

Ruhl v. Heintze, 97 App. Div. 446.

327.

Serve on the president or other head of the corporation or the officer of the company in whose custody the books of account are a subpoena *duces tecum*, at least five days before the day he is required to attend, requiring the production upon the trial of the books of account. Serve upon the president personally a subpoena without a *duces tecum* clause. The production of the books can also be compelled by an order requiring their production upon the trial.

Code of Civil Procedure, secs. 867, 868, 869.

Pay to each person subpoenaed fifty cents for one day's attendance, and if he resides more than three miles from the place of attendance, eight cents for each mile going to the place of attendance.

Code of Civil Procedure, sec. 852, 3318.

328.

The court should admit the evidence. X was not a party to the agreement, and was in no way connected with it. The action was not on the agreement nor between the parties thereto.

"The rule that where an agreement is reduced to writing, it cannot be controverted or varied by parol evidence, applies only to the parties to the agreement; one not connected in any way with the agreement may show by parol what the real transaction was."

Brown v. Thurber, 77 N. Y. 613.

Folinsbee v. Sawyer, 157 N. Y. 199.

329.

The court should admit the testimony.

It was competent as tending to show a fraudulent intent.

Chisholm v. Eisenhuth, 69 App. Div. 134.

330.

The court should overrule the objection.

The conviction may be proved for the purpose of affecting the weight of X's testimony either by the record or by his cross-examination upon which X (the witness) must answer any proper question relevant to that inquiry, but the party cross-examining is not concluded by the answer to such question.

Penal Law, sec. 2444 (Laws 1909, chap. 88).

Code Civil Procedure, sec. 832.

331.

Yes. Guilty of a misdemeanor; of conspiring to commit the crime of burglary. No overt act was necessary under the circumstances disclosed.

"No agreement except to commit a felony upon the per-

son of another, or to commit arson or burglary, amounts to a conspiracy, unless some act beside such agreement be done to effect the object thereof, by one or more of the parties to such agreement."

Penal Law, secs. 580, 583 (Laws 1909, chap. 88).

Code Criminal Procedure, sec. 398.

332.

Judgment and sentence invalid.

"When the defendant appears for judgment, he must be asked by the clerk whether he have any legal cause to show why judgment should not be pronounced against him."

Code Criminal Procedure, sec. 480.

Allocution is necessary.

Messner v. People, 45 N. Y. 1.

People v. McClure, 148 N. Y. 101.

Ball v. U. S., 140 U. S. 118.

333.

The refusal to charge as requested was erroneous.

Intent is a necessary factor in the crime of murder, and the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act and consequently the grade or degree of his crime.

Penal Law, sec. 1220 (Laws 1909, chap. 88).

People v. Corey, 148 N. Y. 476.

334.

Judgment for B. An action will lie for a false representation made as to an existing fact, with fraudulent intent, where a direct injury results therefrom, and where a contract would have been fulfilled but for the fraudulent representations of a third person, although it could not have been enforced.

Benton v. Pratt, 2 Wend. 385.

Rice v. Manley, 66 N. Y. 82, 85.

Rich v. N. Y. C. & H. R. R. Co., 87 N. Y. 382, 399.

New York L. I. Co. v. Chapman, 118 N. Y. 288, 294.

335.

Judgment for M. The removal of the gates did not work such a forfeiture as to justify an assault and battery by B to prevent the continued use of the way, and the right of way carried with it the incidental right to make necessary repairs.

McMillian v. Cronin, 75 N. Y. 474.

Bristol v. Burr, 120 N. Y. 427, 431.

336.

The company was liable. It had a right to make a rule that a passenger should procure a ticket before entering the cars and deliver it up at the end of his passage, but it had no right to establish and enforce a regulation that if he did not pay or deliver a ticket he should be detained and imprisoned until he did, as he was at most a mere debtor and his debt could not be enforced by imprisonment.

Lynch v. Met. Railroad Co., 90 N. Y. 77.

Avery v. N. Y. C. & H. R. R. Co., 121 N. Y. 31, 34.

Craven v. Bloomingdale, 171 N. Y. 439, 449.

337.

The heirs-at-law should recover. The devise having been invalid and therefore ineffective, the testator as to his real estate died intestate, and upon his death it vested in his heirs-at-law under the statute of descent, and words of disinheritance in his will were insufficient to deprive them of their title. It could be affected only by a legal devise of the property.

Gallagher v. Crooks, 132 N. Y. 338.

Chamberlain v. Taylor, 105 N. Y. 193.

Herzog v. The Title Guaranty & Trust Co., 177 N. Y. 97, 98.

Pomroy v. Hincks, 180 N. Y. 73.

338.

It was sufficiently signed under the statute which requires it to be signed at the end thereof. The testator by signing

below the attestation clause made it a part of his will, and therefore the subscription was at the end of the will and in compliance with the statute.

Younger v. Duffie, 94 N. Y. 535.

Matter of Laudy, 161 N. Y. 429, 432.

339.

Under the will A acquired a life estate and C a vested remainder, which constituted a valid title. The words "from and after" or other words or phrases denoting time in a devise of a remainder limited upon a particular estate determinable on an event that must happen relate merely to the time of the enjoyment of the estate and not to the time of its vesting, especially in devises of real estate.

Moore v. Lyons, 25 Wend. 119.

Livingston v. Greene, 52 N. Y. 118.

Ackerman v. Gorton, 67 N. Y. 63, 66.

Nelson v. Russell, 135 N. Y. 137.

Connelly v. O'Brien, 166 N. Y. 406.

Lewis v. Howe, 174 N. Y. 346.

340.

While the farm is in the hands of the vendee, A has a vendor's lien upon the farm for the unpaid purchase price, and the taking of a promissory note therefor did not affect the lien.

Garson v. Green, 1 Johns. Ch. 308.

Fisk v. Porter, 2 Keyes, 74.

Chase v. Peck, 21 N. Y. 581, 584.

Benedict v. Benedict, 85 N. Y. 625.

Maroney v. Boyle, 141 N. Y. 462.

Hubbell v. Hendrickson, 175 N. Y. 175.

341.

The defense was invalid because A's remedy by an action at law was inadequate and would involve a multiplicity of suits. In an action at law he could recover only the rental

value of the lots, and B might, by paying the judgments obtained therefor, in effect make himself A's tenant against his will, and prevent his enjoyment and improvement of his property.

Wheelock v. Noonan, 108 N. Y. 179.

Tallman v. N. E. R. R. Co., 121 N. Y. 125.

N. Y. C. & H. R. R. Co. v. City of Rochester, 127 N. Y. 591.

342.

B could maintain his suit and was entitled to an equitable lien on the property for the amount he invested therein, with a right to sell it, if necessary, to recover that amount. The right of lien was founded upon the agreement and was so far performed that equity would enforce it, and the statute of frauds was no defense.

Smith v. Smith, 125 N. Y. 224.

Sprague v. Cochran, 144 N. Y. 104.

Freeman v. Freeman, 43 N. Y. 34.

343.

They applied to the Supreme Court upon notice to the Attorney-General and to such other persons as the court directed, for an order amending the certificate of incorporation.

General Corporation Law (Laws 1909, chap. 28), sec. 7.

344.

No; the action will not lie. In the absence of fraud, usurpation or of gross negligence an act *intra vires* is an act of corporate management and a minority of the stockholders cannot question the same. The majority rule, and the courts will leave the dissatisfied minority to redress their grievances through ordinary corporate methods.

10 Cyc. 969.

Cook on Corporations, sec. 684.

Gamble v. Q. C. W. Co., 123 N. Y. 91.

Farmers' L. & T. Co. v. N. Y. & N.

R. R. Co., 150 N. Y. 426.

345.

The corporation had no defense because the defense of usury may not be interposed by a corporation.

Gen. Bus. Law, (Laws 1909, chap. 25),
sec. 374.

Stewart v. Bramhall, 74 N. Y. 85.

Ludington v. Kirk, 17 Misc. 129.

Hubbard v. Tod, 171 U. S. 501.

346.

The guardian shall lose the custody of the estate and of the ward and shall forfeit to the ward treble damages.

Domestic Relations Law (Laws 1909,
chap. 19), sec. 83.

347.

The deed is insufficient for want of the signature of B's former wife. A's former wife need not sign. The judgment of divorce granted to A because of his wife's adultery forfeited her dower; *contra*, as to B's former wife. The marriage contract in her action was not dissolved for her misconduct and she still has dower.

Real Property Law (Laws 1909, chap.
52), sec. 196.

Fowler's Real Property Law (2d ed.),
pp. 575, 576, and cases cited.

348.

The marriage of Y and Z is voidable, but is valid until its nullity is declared by a court of competent jurisdiction. Their rights and obligations are those of husband and wife and X has no rights or obligations until their marriage is annulled.

Domestic Relations Law (Laws 1909,
chap. 19), sec. 7.

349.

Judgment valid. The amount recoverable in an action to recover damages for injuries resulting in death shall not be subject to any statutory limitation.

Constitution of New York, art. 1, sec. 18.

350.

Objection overruled. Prisoner was confronted with the witness and had an opportunity for his cross-examination. The constitutional right of the defendant to be confronted with the witnesses in a criminal prosecution is involved.

Code Criminal Procedure, sec. 8, subd. 3.

People v. Fish, 125 N. Y. 137, at 151.

Bill of Rights, 1 Rev. Stats. 94, sec. 14.

U. S. Const., VI Amendment.

351.

AFFIDAVIT OF SERVICE.

STATE OF NEW YORK, }
ALBANY CITY AND COUNTY, } ss.:

John Doe, being duly sworn, deposes and says, that he is more than twenty-one years of age and that on the day of , 190 , at No. 47 Broadway, in the city of Albany, N. Y., he personally served the annexed summons on John Smith, one of the defendants therein named, who is an infant under the age of fourteen years, by delivering to him, said infant, in person a copy thereof and leaving the same with him, and at the same time and place by personally delivering a copy thereof to Peter Smith, his father, and leaving the same with him. Deponent further states that he knew John Smith, so served as aforesaid, to be the person mentioned and described in said summons as defendant therein, and the said Peter Smith to be his father.

(Signed.) JOHN DOE.

Sworn to before me, this }
day of, 1905. }

Commissioner of Deeds,
Albany, N. Y.

Supreme Court Rule, 18.

Code Civil Procedure, sec. 426.

352.

D, the defendant, wins. The demurrer should be sustained. The action abated upon the death of C, the wrongdoer, and could not be maintained against his representatives.

Hegerich v. Keddie, 99 N. Y. 258.
 Moriorty v. Bartlett, 99 N. Y. 651.
 Brackett v. Griswold, 103 N. Y. 425, 428.
 Blake v. Griswold, 104 N. Y. 613.
 Matter of Meekin v. B. H. R. R. Co.,
 164 N. Y. 151.

353.

The objection should be overruled. The defendant under his general denial was entitled to show that there were no dealings between A and B upon which an account could be stated.

Field v. Knapp, 108 N. Y. 87.

354.

Judgment for B. C could not recover because not a borrower within the meaning of the usury laws declaring such payment or offer to pay unnecessary as a condition of granting the relief prayed for where the suit is brought by the borrower.

Buckingham v. Corning, 91 N. Y. 525.
 Allerton v. Belden, 49 N. Y. 373.
 Wheelock v. Lee, 64 N. Y. 242.

355.

The court had jurisdiction to grant the plaintiff's application. The omission of the plaintiff to have a guardian *ad litem* appointed was a mere irregularity and did not affect the jurisdiction of the court.

Rima v. Rossie Iron Works, 120 N. Y.
 433.

356.**AFFIDAVIT OF MERITS.**

(TITLE OF ACTION.)

STATE OF NEW YORK, }
 ALBANY CITY AND COUNTY, } ss.:

John Doe, being duly sworn, deposes and says that he is the defendant in the above-entitled action; that he has fully and fairly stated the case to John Smith, his counsel, who resides at No. 86 State street, Albany, N. Y., and that he has a good and substantial defense on the merits to the action as he is advised by his said counsel after such statement, and verily believes.

(Signed) JOHN DOE.

Sworn to before me, this }
 day of, 1905. }

_____,
 Commissioner of Deeds,
 Albany, N. Y.

357.

No; A could not recover; judgment for B. The contract being executory, an implied warranty of title existed, and upon its failure the purchaser had a right to treat the contract as rescinded, and A could not recover.

Burwell v. Jackson, 9 N. Y. 535.

Whittemore v. Farrington, 76 N. Y. 452,
453, 457.

Moore v. Williams, 115 N. Y. 586, 592.

Walton v. Meeks, 120 N. Y. 79, 83.

Vought v. Williams, 120 N. Y. 253, 257.

Blanck v. Sadlier, 153 N. Y. 556.

358.

Judgment for B. The agreement of B to advance the money upon the mortgage, and his promise to delay foreclosure, were both dependent upon the undertaking of A to erect and complete the houses, and when he repudiated the further performance of the contract B was discharged from

further obligations, was at liberty to enforce his securities for the money advanced, and previous demand was not necessary.

Ferris v. Spooner, 102 N. Y. 10.

359.

Judgment for H. The right to damages for closing the street arose at once although the amount was not fixed and ascertained until after the conveyance by H to B. The right of H to the damages having accrued when the street was closed was a personal right, and when paid it related back to the original debt which accrued at that time. It was not embraced within the deed from H to B, but was a mere right of action not running with the land.

King v. Mayor, 102 N. Y. 171.

Donnelly v. Brooklyn, 121 N. Y. 139.

Sage v. Brooklyn, 89 N. Y. 189.

360.

A wins. B made the payment voluntarily and without A's request, and had no legal claim upon A for reimbursement. A's expression of gratitude was not a promise of payment, and even if so considered, it was without legal consideration and void.

Goulding v. Davidson, 26 N. Y. 608.

9 Cyc. 316, 356.

Renss Glass Factory v. Reid, 5 Cowen, 588, 619, 620.

Smith v. Ware, 13 Johns. R. 257.

Beach on Contracts, sec. 153.

The rule of "payment for honor *supra protest*" has no relation to the question.

Eaton & Gilbert on Commercial Paper, p. 625.

361.

Judgment for plaintiff.

"A hiring at so much a year, no time being specified, is an indefinite hiring; and such a hiring is a hiring at will and may be terminated at any time by either party."

Martin v. Insurance Co., 148 N. Y. 117.

Outerbridge v. Campbell, 87 App. Div. 597.

Hotchkiss v. Godkin, 63 App. Div. 470.

362.

Each liable *in solido* for the entire debt. B having contributed his \$50,000 in merchandise and accounts and not "in actual cash payments" is liable as a general partner for the debts of the firm.

Partnership Law (Laws 1909, chap. 44),
sec. 30.

Durant v. Abendroth, 69 N. Y. 148.

Hotopp v. Huber, 160 N. Y. 528.

Met. Nat. Bank v. Sirrett, 97 N. Y. 326.

363.

The judgment is valid as against C as is the levy on the firm property, but the levy under the execution on C's private dwelling-house is not, because he was not served.

"In an action against joint debtors, service of summons on one authorizes judgment against all, which may be enforced by execution against the joint property, although the other defendants are not served and do not appear in the action."

Yerkes v. McFadden, 141 N. Y. 136.

Staiger v. Theiss, 19 Misc. 170.

Schwarzchild v. Mathews, 39 App. Div. 481.

Code Civil Procedure, secs. 1932-1935.

364.

Judgment for B. Demurrer sustained.

"The indorsement or assignment of the instrument (note) * * * by an infant passes the property therein

notwithstanding that from want of capacity the * * * infant may incur no liability thereon."

Negotiable Instruments Law (Laws 1909, chap. 43), sec. 41.

Eaton & Gilbert on Commercial Paper, pp. 48-51.

365.

A and B are liable. D and E are not liable.

"Where an instrument is negotiated back to a prior party, such party may, subject to the provisions of this chapter, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable."

Negotiable Instruments Law (Laws 1909, chap. 43), sec. 80.

Eaton & Gilbert on Commercial Paper, p. 352.

366.

Judgment for C. A was a general agent for B in buying and selling horses and had implied authority to warrant.

The instructions to A never to warrant were not known to C and did not bind him.

"In the case of a factor or servant of a horse dealer in the habit of making sales, if the factor or servant should be specially instructed in a given instance, the instructions would not be binding if in conflict with the general authority derivable from their occupations."

Cowen's Treatise, Vol. I, secs. 157, 158 (5th ed.), and cases cited.

Nelson v. Cowing, 6 Hill, 336.

Smith v. Tracy, 39 N. Y. 79.

Bierman v. City Mills Co., 151 N. Y. 489.

Wait v. Borne, 123 N. Y. 592.

Sandford v. Handy, 23 Wend. 266, 267.

367.

The loss falls upon B. X was a commercial agent and sold by sample; he did not have possession of the malt, nor did he make delivery thereof, the latter having been made by his principal.

The parties had had no prior dealings to establish a course of business in regard to paying X; the payment was made after the sale and B knew who the principal was.

X had no authority to collect the money and B must stand the loss.

Vide: Higgins v. Moore, 34 N. Y. 417.

Lamb v. Hirschberg, 1 App. Div. 523.

Carter v. White Lead Co., 65 App. Div. 476.

Dunn v. Wright, 51 Barb. 244.

Maxfield v. Carpenter, 65 St. Rep. 587.

368.

No; A was not released. The statement of the holder of the note that he would not bother B nor sue him on the note did not constitute a valid contract binding on him and extending the time of payment of the note for ninety days. There was a want of a valid consideration.

"A valid consideration is an essential element of an agreement, after maturity, to extend the time of payment of a promissory note, such as will discharge a surety thereon; and in an action upon the note, if such an agreement is relied upon as a defense, the consideration therefor must be pleaded and proved."

National Citizens' Bank v. Toplitz, 178 N. Y. 464.

Gahn v. Niemcewicz, 11 Wend. 312.

Fifth National Bank v. Woolsey, 21 Misc. 761, 762.

369.

A, the surety, can recover from C to the extent of the value of the collateral which the latter surrendered to B.

"A surety who pays the debt is entitled to be put in the place of the creditor and to all the means and to every rem-

edy which the creditor possesses to enforce payment from the principal debtor."

- Hayes v. Ward, 4 Johns. Ch. 123.
 Griswold v. Jackson, 2 Edw. Ch. 468.
 Grow v. Garlock, 97 N. Y. 81.
 State Bank v. Smith, 155 N. Y. 197, 200.
 Pitts v. Congdon, 2 N. Y. 352.
 Sternbeck v. Friedman, 23 Misc. 176.
 Am. & Eng. Encyc. Law, Vol. 27, p. 206
 (2d ed.).

370.

No; the company is not liable. The house, while not vacant, was unoccupied within the meaning and intent of the policy because it was not, at the time of the fire, a place of abode of human beings or used as such.

- Herman v. Adriatic Fire Ins. Co., 85
 N. Y. 162.
 Barry v. Prescott Ins. Co., 35 Hun, 604.
 Huber v. Manchester Fire Assur. Co., 92
 Hun, 228.
 Martin v. Rochester German Ins. Co., 86
 Hun, 35.
 Couch v. Farmers' Ins. Co., 64 App. Div.
 367.
 Thieme v. Niagara Fire Ins. Co., 100
 App. Div. 278.

371.

Judgment for the insurance company. The policy was void. The insured was guilty of fraud, and knowledge on the part of the agent of the life insurance company of the falsity of the warranty will not relieve the assured from a forfeiture of the policy when the alleged breach of warranty is founded upon a misstatement by the assured in his application.

- Ætna Life Ins. Co. v. France, 91 U. S.
 510.
 Kenyon Case, 122 N. Y. 247.
 Barteau v. Phœnix M. L. Ins. Co., 67
 N. Y. 595.
 Cook on Life Insurance, sec. 20, pp. 32,
 37.

372.

Judgment for X, the plaintiff. It was the auctioneer's duty to give X immediate notice of the levy and that his title to the property was questioned.

"A factor is bound to assume that his principal is the owner of goods consigned to him for sale, and his allegiance is alone due to his principal. He cannot justify a refusal to pay over the proceeds of such sale on the ground that the same have been seized by virtue of an attachment against a third person * * * of which the principal had no notice."

Barnard v. Kobbe, 54 N. Y. 516.

Rogers v. Weir, 34 N. Y. 463.

373.

Judgment for B. He is not liable at the suit of A for damages, because the transaction was a bailment and the factory, cloth and other material were destroyed accidentally without the fault or negligence of B.

Stewart v. Stone, 127 N. Y. 500.

Sattler v. Hallock, 160 N. Y. 291, at 298.

For the same reasons A is liable to B for the value of his labor expended in completing the trousers not delivered.

Labowitz v. Frankfort, 4 Misc. 275; Id. 624.

Hayes v. Gross, 9 App. Div. 12, at p. 17; affd., 162 N. Y. 610.

Rhodes v. Hinds, 79 App. Div. 383.

374.

Yes. He can begin his action at once without tendering delivery, nor is it necessary for him to await the expiration of the time of performance fixed by the contract.

A was entitled to store the flour for B and sue for the purchase price, or sell the same as B's agent and recover the deficiency, or he could keep the flour as his own and sue for the difference between the contract price and the market

price at the time and place of delivery. He followed the second course and was well within his rights.

Ideal Cash Register Co. v. Zunino, 39 Misc. 313.

Windmuller v. Pope, 107 N. Y. 674.

375.

Judgment for A. Title had not passed to him. The cigars he ordered had not been shipped, and those shipped were not on the credit stated in the order; neither had A accepted, for the cigars were destroyed before they reached him. There was no contract, express or implied, between the parties.

Bruce v. Pearson, 3 Johns. 534.

Corning v. Colt, 5 Wend. 253, 256.

Downer v. Thompson, 2 Hill, 137; Id., 6 Hill, 208.

376.

The exception was not well taken. The presumption of innocence has no application to civil cases but to criminal cases only.

Kurz v. Doerr, 86 App. Div. 507; affd., 180 N. Y. 88.

377.

Objection should be overruled. Notwithstanding the statement in the note that it was given for money loaned, it is open to either party to show the true consideration thereof.

Miller v. McKenzie, 95 N. Y. 575, 578.

Wheeler v. Billings, 38 N. Y. 263, 264.

Arnot v. The Erie Railway Co., 67 N. Y. 321.

378.

Objection should be sustained. The declarations of the decedent were merely a narrative of a past transaction and not admissible as a part of the *res gestæ*. The *res gestæ* was the accident of which the declarations were no part, not being made at the same time or place, nor were they so

nearly contemporaneous with it as to characterize the accident or throw any light upon it.

Waldele v. Railroad, 95 N. Y. 274.

People v. Driscoll, 107 N. Y. 414, 424.

Martin v. Railroad, 103 N. Y. 626.

People v. Smith, 172 N. Y. 242.

Austin v. Bartlett, 178 N. Y. 310, 313.

379.

The exception was valid. The widow was a person interested in the event of the action for if the deed was canceled, her right of dower in the property transferred by her consent would in effect be restored.

Sanford v. Ellithorp, 95 N. Y. 48.

380.

Judgment should be for A. The note was barred by the statute of limitations. To make an indorsement upon a promissory note by the holder, of part payment, without the privity of the maker, competent evidence to meet the statute of limitations it must appear that it was made at a time when its operation would be against the interest of the party making it.

Mills v. Davis, 113 N. Y. 243.

Roseboom v. Billington, 17 Johns. 181,
182.

Read v. Hurd, 7 Wend. 408.

381.

Motion was denied. The defendant's rights were not jeopardized, nor was he in any way prejudiced. The adjournment was simply a suspension of the proceedings to be continued, and the court still retained jurisdiction for that purpose.

People v. Sullivan, 115 N. Y. 185.

382.

It was sufficient. Section 2 of the Penal Law provides that a person who counsels, induces or procures another to commit a crime is a principal and hence the indictment was sufficient. Although the offense was committed by the de-

fendant through the agency of another still it was the act of the defendant.

People v. Bliven, 112 N. Y. 79.

People v. Mills, 178 N. Y. 274, 288.

People v. Peckens, 153 N. Y. 576.

Penal Law (sec. 29), Laws 1909, chap. 88.

383.

Yes. The identity of the dead body found, with that of B, was not included in the *corpus delicti* and was left open to indirect or circumstantial evidence.

People v. Palmer, 109 N. Y. 110.

384.

Motion denied. The doctrine *res ipsa loquitur* applies.

"While in an action against a railroad corporation the burden of showing negligence on its part, occasioning an injury, rests in the first instance, upon the plaintiff, proof that the injury was the result of an accident which would not ordinarily have happened had the track and machinery been in proper condition, and the latter operated with proper care, is sufficient, and the onus then rests upon the defendant to prove that the injury was caused without its fault."

Seybolt v. The N. Y., L. E. & W. R. R. Co., 95 N. Y. 562.

Cosulich v. S. O. Co., 122 N. Y. 127, 128.

Klinger v. United Traction Co., 92 App. Div. 104.

385.

Judgment for A. The words were not spoken of C in reference to his occupation as a physician; they were not actionable *per se* and no special damages were proven.

Cassavoy v. Pattison, 93 App. Div. 370, 372.

Moore v. Francis, 121 N. Y. 199.

Moore v. M. N. Bank, 123 N. Y. 420.

Bornman v. Star Co., 174 N. Y. 219.

Triggs v. Sun P. & P. Assn., 179 N. Y. 144.

386.

No.

"The owner of a city lot may improve and fill it up, or may, if he desires to build, construct walls so as to protect his lot against the surface water from an adjoining higher lot."

Vanderwiele v. Taylor, 65 N. Y. 341.

Yynch v. Mayor, 76 N. Y. 60.

Barkley v. Wilcox, 86 N. Y. 144.

Davis v. Niagara F. T. Co., 171 N. Y.
336.

387.

B, C and D, the adopted child, take equally.

A, the foster parent, and D, the adopted child, sustain towards each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation, including the right of inheritance from each other.

Domestic Relations Law (Laws 1909,
chap. 19), sec. 114.

Van Beck v. Thomsen, 44 App. Div.
373; *affd.*, 167 N. Y. 601.

Dodin v. Dodin, 40 N. Y. Supp. 748.

388.

C, the residuary legatee, takes the house and lot, and the \$10,000 in cash.

Lapsed devises as well as lapsed legacies fall into the residue, and are disposed of under the general residuary clause of the will.

Cruickshank v. Home of the Friendless,
113 N. Y. 337.

Matter of Allen, 151 N. Y. 243.

Moffett v. Elmendorf, 152 N. Y. 484.

389.

The will is valid as to the personal property, for a male person of the age of eighteen years and upwards may give and bequeath his personal estate by will in writing.

Decedent Estate Law (Laws 1909,
chap. 18), sec. 15.

An infant cannot make a valid will devising his or her real estate.

Decedent Estate Law (Laws 1909, chap. 18), sec. 10.

The will will be probated as a will of personal estate, and B will receive his \$20,000 of personal property thereunder. A dies intestate as to his real estate, and that will go to his two brothers B and C subject to the widow's dower.

Real Property Law (Laws 1909, chap. 52), sec. 190.

Decedent Estate Law, sec 87.

390.

As between the husband and the wife equity will consider the mortgage as a valid and subsisting lien on the farm, and as never having been paid. She can bring an action to have the satisfaction set aside and its record canceled and for its foreclosure.

The equitable principle involved is that "equity regards as done that which ought to be done."

Alden v. Barnard, 15 Misc. 512.

Vide 16 Cyc. 135.

Am. & Eng. Encyc. Law, Vol. 11 (2d ed.), p. 180.

391.

The \$10,000 shall be distributed as real estate; the child of the deceased son taking the \$10,000 as such, as the heir-at-law of his father subject to the widow's dower therein.

"Equity regards that as done which ought to be done." Under the doctrine of equitable conversion, in order to carry out the intention of the testator, equity will regard the money which he directed to be invested in a farm as real estate and will dispose of it as such.

Thorn v. Coles, 3 Edw. Ch. 330.

Lorillard v. Coster, 5 Paige Ch. 172.

Hawley v. James, 5 Paige Ch. 318.

Bolton v. De Peyster, 25 Barb. 539.

Am. & Eng. Encyc. Law (2d ed.), Vol. 7, p. 465.

"Money directed by will to be employed in the purchase of land is to be considered as land."

9 Cyc. 840.

As to the distribution, *Vide* Real property Law (Laws 1909, chap. 52), sec. 190.

Decedent Estate Law (Laws 1909, chap. 18), sec. 81.

392.

Judgment for D. A had the absolute right when he paid the amount of the mortgage to B to take back, instead of a satisfaction, an assignment in blank, and to subsequently reissue it and to insert in the assignment the name of the new holder. C has no complaint coming; he purchased the farm subject to the mortgage which he assumed and agreed to pay, and to that extent did not pay cash. Hence he is not harmed and is estopped from claiming payment and satisfaction of the mortgage.

Kellogg v. Ames, 41 N. Y. 259.

Wallach v. Schulze, 22 App. Div. 60.

Bogert v. Bliss, 148 N. Y. 195, at 200, 201.

393.

The claim of the old board to hold over is invalid.

The "B" ticket is elected as certified, it having received a plurality of the votes cast; a majority vote is not required.

"The directors of every stock corporation shall be chosen at the time and place fixed by the laws of the corporation by a plurality of the votes at such election."

Stock Corporation Law (Laws 1909, chap. 61), sec. 25.

394.

Yes. A has a valid claim for the value of his services. The services were rendered to the stock company by A as an attorney on its retainer, and were outside of his official duties. He is entitled to be paid.

Bagley v. Carthage, W. & S. H. R. R. Co., 165 N. Y. 179; 118 App. Div. 50.

395.

The note is good under the circumstances disclosed.

(a) It was ordered executed and issued for corporate purposes at a regular meeting of the corporation. A majority of the directors were present who constituted a quorum for the transaction of business, and a majority of the quorum present voted in favor of the proposition.

General Corporation Law (Laws 1899, chap. 28), sec. 34.

(b) The paper signed by the dissenting directors and the two absent directors had no force; they, although a majority of the board, have no separate or individual authority to bind the corporation,—it is only when acting as a board can they make or authorize acts binding on the corporation.

People's Bank v. St. Anthony's R. C. Church, 109 N. Y. 512.

Columbia Bank v. G. T. Church, 127 N. Y. 361.

396.

None. Although legitimized by the marriage of its parents and entitled to all the rights and privileges of a legitimate child, an estate or interest vested or trust created before the marriage is not divested or affected by reason of the child being legitimized.

Domestic Relations Law (Laws 1909, chap. 19), sec. 24.

397.

The appointment is invalid. The husband cannot appoint a guardian of the person of his infant child to the exclusion of the surviving wife. The wife is a joint guardian of her children with her husband with equal powers, rights and duties in regard to them. The wife's fitness to act as guardian is not involved in the question.

Domestic Relations Law (Chap. 19, Laws 1909), sec. 81.

398.

Judgment for defendant.

A sued the infant "in contract," and as he sought to enforce the contract, and not to recover damages resulting from the fraud, he is not entitled to recover.

Fraudulent representations made by an infant to induce another to enter into a contract with him will not give it validity.

Studwell v. Shaffer, 54 N. Y. 249.

N. Y. Building Loan Co. v. Fisher, 23
App. Div. 363.

399.

"Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this state one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people * * *."

N. Y. Const., art. II, sec. 1.

400.

The court should deny the motion.

"No person shall be subject to be twice put in jeopardy for the same offense."

N. Y. Constitution, art. I, sec. 6.

People v. Comstock, 8 Wend. 549.

Code of Criminal Procedure, sec. 9.

A new trial can only be granted in criminal actions for misconduct of the jury when a verdict has been rendered against the defendant.

Code of Criminal Procedure, secs. 463,
465.

401.

CITY COURT OF THE CITY OF NEW YORK.

| | |
|------|---------------------|
| A., | } <i>Plaintiff,</i> |
| agst | |
| B., | |
| | <i>Defendant.</i> |

Plaintiff complains of the defendant in the above entitled action and alleges:

I. That heretofore and on the 3d day of June, 1907, at the city of New York, he rendered services to the defendant at his request in repairing and upholstering his, defendant's, furniture and that he then and there furnished the cloth and other materials necessary in the said work upon the like request and that he delivered the same to the defendant.

II. That said work done and materials furnished as aforesaid were reasonably worth the sum of two thousand dollars, which sum became due therefor on June 3, 1907.

III. That no part of the same has been paid.

Wherefore, plaintiff demands judgment against said defendant for the sum of two thousand dollars with interest thereon from June 3, 1907, besides the costs of this action.

JOHN DOE,

Attorney for Plaintiff,

Office and Post-office Address,

5 Nassau St., New York, N. Y.

(a) The jurisdiction of the City Court of the city of New York in an action wherein the complaint demands judgment for a sum of money only is limited to two thousand dollars, exclusive of interest and costs as taxed.

Code Civ. Pro., sec. 316.

(b) If the action was brought in a County Court, the complaint would have to allege in addition, that the defendant was at the time of the commencement of the action a resident of the county where the action was brought.

The jurisdiction of the County Court, in an action wherein the complaint demands judgment for a sum of money only, is two thousand dollars.

Code Civ. Pro., sec. 340, subd. 3.

402.

Counterclaim was valid. "This counterclaim was upon contract, the plaintiff's cause of action was in tort, but both causes of action arose out of the same transaction, the sale of the horse, and the counterclaim was, therefore, properly interposed under sections 2945, and 501 and 502 of the Code of Civil Procedure."

Vandervoort v. Mink, 113 App. Div.
601.

403.

The sheriff. A voluntary general appearance of the defendant is equivalent to personal service of the summons on him (Code Civil Procedure, sec. 424) and gives the Court jurisdiction of the person of the defendant. Hence the judgment in the case was one *in personam* and authorized the sheriff to levy on and sell, under the execution issued, any property of B found in his county whether attached or not.

Reed v. Chilson, 142 N. Y. 152.
Code Civil Procedure, secs. 1240, 1364,
1368.

404.

A, being an infant, must, before the summons is issued, procure the appointment of a competent and responsible person to appear as his guardian ad litem for the purposes of the action.

The infant, being fourteen years of age and upwards, must make the application to the Court in which the action is brought or to a judge thereof for the appointment. If the action is brought in the Supreme Court, the County Judge of the County where the action is triable may appoint the guardian.

The practice is regulated by Code Civil Procedure, secs. 468 to 477.

405.

Enter judgment against the defendant B in the name of the original party plaintiff.

If either party to an action dies after a verdict but before

final judgment is entered, the Court must enter final judgment in the names of the original parties.

Code Civil Procedure, sec. 763.

406.

No. "A resident of a foreign State, while attending Court in this State as a witness, cannot be served with a process for the commencement of a civil action against him."

Person v. Grier, 66 N. Y. 124.

Parker v. Marco, 136 N. Y. 585.

Weston v. Citizens Nat. Bnk., 64 App. Div. 145.

Move to set aside the service of the summons.

Matthews v. Tufts, 87 N. Y. 568.

People ex rel. Ballin v. Smith, 184 N. Y. 99.

407.

Husband gets curtesy. "Curtesy is a legal estate for life, dependent on marriage, seisin, issue born alive and death of the wife." (Fowler's Real Property Law (2d ed.), p. 837.) All of the above elements existed and the wife had not alienated the estate in her lifetime nor devised it. It made no difference that the seisin of the wife was subsequent to the death of the child.

Jackson v. Johnson, 5 Cowen, 74.

12 Cyc. 1007.

After the death of the husband the estate descended to the collateral relatives. (Decedent Estate Law, Laws 1909, ch. 18, sec. 86.) The brother took one-half in fee; the two children of the deceased sister each took one-quarter in fee, dividing the share between them the mother would have taken if living. (Id. 87.)

408.

B and C each own to the center of the highway subject to the public right. A devise of land bounded upon a highway, provided the deviser at the time owned to the center and there be no words or specific description to show a

contrary intent, carries the fee of the highway to the center thereof.

Smith v. Bartlett, 180 N. Y. 360.

Vide Johnson v. Grenell, 188 N. Y. 407.

409.

The contract to convey is valid.

"While a contract for the conveyance of land must be in writing, yet an agent to execute the contract may be appointed by parol."

Chester v. Dickerson, 54 N. Y. 1 at 10.

Newton v. Bronson, 13 N. Y. 587.

Moody v. Smith, 70 N. Y. 598.

Fowler's Real Property Law (2d ed.),
p. 714.

C can sue at law for his damages.

Boyd v. DeLancey, 91 Hun, 542.

Or in equity for specific performance.

Stone v. Lord, 80 N. Y. 60.

Bauman v. Pinckney, 118 N. Y. 604.

Arend v. Laing, 79 Hun, 203.

Losee v. Morey, 57 Barb. 561.

Schroeppel v. Hopper, 40 Barb. 425.

410.

A not liable. The guaranty was "of collection," not of payment, and A is not liable thereon until B had sued and exhausted his remedies at law and failed to collect.

"One who guarantees generally the collection of a demand, thereby undertakes that it is collectible by due course of law, and only promises to pay when it is ascertained that it cannot be collected by suit, prosecuted to judgment without unnecessary delay against the principal, and execution issued thereon, and an endeavor so to collect is a condition precedent to a right of action against the guarantor."

Salt Springs Nat. Bnk. v. Sloan, 135
N. Y. 371.

Phillips v. Lindley, 112 App. Div. 285.

Cumpston v. McNair, 1 Wendell, 457.

411.

Yes. "Where the vendors of goods to be delivered and paid for in installments, refuses to deliver an installment, a breach of the entire contract is thereby established for which the vendee if he so elects may immediately recover all his damages."

Pakas v. Hollingshead, 184 N. Y. 211.

412.

A can maintain his action and the accounting can be had without a dissolution.

"Plaintiff was not obliged to bring an action for dissolution. A partner in a going concern may bring an action in equity to call his copartner to account, and to compel him to act in conformity with the agreement, and an accounting may be had without dissolution to enable him to obtain his share of the partnership profits from the benefits of which he had been excluded. * * * The action is * * *, but for an accounting concerning the profits of a transaction which has been executed" (Sanger v. French, 157 N. Y. 235), provided, it appears, as stated in the question, that the special reason exists, that "one partner has sought to withhold from his copartner his profits arising from some secret transaction."

Lord v. Hull, 178 N. Y. 14.

413.

Judgment for B. As surviving partner, B may sue in his own name for partnership debts whether contracted before or after the death of the deceased partner (Bernard v. Wilcox, 2 Johns. Cases, 374), and it is not a defense that the personal representatives of the deceased partner are not joined as parties plaintiff.

Matthews v. Stietz, 5 Civ. Pro. Rpts. 235.

Daby v. Ericsson, 45 N. Y. 786.

Williams v. Whedon, 109 N. Y. 333.

Nehrboss v. Bliss, 88 N. Y. 604.

414.

No. While the original note was usurious by reason of the corrupt agreement of the parties by which more than lawful interest was to be paid (*Rosenstein v. Fox*, 150 N. Y. 354) where it is transferred to an innocent holder and he receives directly from the maker a new one in its stead, such new note cannot be impeached for usury in the original.

Kilmer v. O'Brien, 14 Hun, 414, and cases cited.

Vide Treadwell v. Archer, 76 N. Y. 196.

415.

The brokers have valid title. The bonds were coupon bonds drawn payable to bearer; they are deemed negotiable and the rights of the brokers, having taken the bonds in good faith and for value before maturity, are the same as the holder of a negotiable bill of exchange, under similar conditions.

Evertson v. Nat. Bnk. of Newport, 66 N. Y. 14.

Dutchess Co. M. Ins. Co. v. Hachfield, 73 N. Y. 228.

McClelland v. Norfolk S. R. R. Co., 110 N. Y. 475.

Hibbs v. Brown, 112 App. Div. 217.

Arons v. Ziegfield, 52 Misc. 571, 572.

Vide Eaton & Gilbert Commercial Paper (2d ed.), p. 37.

416.

Judgment for A.

"Where a contract, not under seal, is made with an agent in his own name, for an undisclosed principal, whether he describes himself as agent or not, either the agent or principal may sue upon it."

Ludwig v. Gillespie, 105 N. Y. 653.

The agent being personally liable on the contract, can sue

on it. The payment of the judgment in the action, if any, would be a complete protection to the defendant against any claim of the principal arising on the contract.

Vide Argersinger v. MacNaughton, 114 N. Y. 539.

Trimble v. N. Y. C. & H. R. R. Co., 39 App. Div. 410.

417.

B has no rights as against X.

"He neither gained nor lost by the transaction in a legal sense," and was not harmed by it nor legally injured, for he can only be made to pay what he was legally bound to pay, viz., the amount of the judgment and interest. A's mere statement that he would discharge the judgment for \$1,000 was not binding and was void for want of consideration. X was not, under the circumstances, B's agent so as to enable B to ratify his act, nor was the act performed under such circumstances as to create an estoppel.

Garvey v. Jarvis, 46 N. Y. 310, 313.

418.

Judgment for B. The omission of C to disclose the previous misconduct of A was such a fraudulent concealment of a material fact which he was required in good faith to disclose that he could not recover of B.

U. S. Life Ins. Co. v. Salmon, 91 Hun, 535; affirmed, 157 N. Y. 682.

32 Cyc. 62.

419.

The co-sureties were not liable. They undertook only to secure the fidelity of A while he was bookkeeper both in the performance of the duties of that position and of any other trust or employment imposed upon or assumed by him during the time he was bookkeeper, and the bond

ceased to be binding upon the sureties when A ceased to act as such bookkeeper.

Nat. Mech. Bkg. Assn. v. Conklin, 90 N. Y. 116.

Smith v. Molleson, 148 N. Y. 241.

Tradesmen's Nat. Bank v. Nat. Surety Co., 169 N. Y. 563.

420.

Judgment for A. The company was estopped from asserting a forfeiture on the ground that it made a mistake in its statement as to the payment of the premium due in November, 1897.

Meeder v. Provident Sav. Life Assurance Soc., 58 App. Div. 80; *affd.*, 171 N. Y. 432.

421.

Judgment for the Insurance Co. The oral assent of the agent did not waive the conditions of the policy and the foreclosure suit and sale rendered it void.

Moore v. H. F. Ins. Co., 141 N. Y. 219.

Gray v. The Germania Ins. Co., 155 N. Y. 180.

Northam v. Dutchess Co. Mut. Ins. Co., 166 N. Y. 319-323.

422.

Judgment for B. The relation between the parties was that of bailment. A was a warehouseman and bound to exercise ordinary care and prudence, and not having done so was liable.

Jones v. Morgan, 90 N. Y. 4.

Roberts v. S. S. D. Co., 123 N. Y. 55.

423.

Judgment for A. The delivery of the bonds to A's wife was not equivalent to a delivery to her husband and did not discharge B from liability.

Kowing v. Manly, 49 N. Y. 192.

424.

No. There was no complete contract as to the goods described in the second order. The catalogue stating prices and terms of sale contained no proposition as to the amount of goods which A was willing to sell on the terms stated. Until an offer is made by one party, complete and definite in all its terms, it is impossible for the other party to make a valid contract by a mere acceptance.

Schenectady Stove Co. v. Holbrook, 101
N. Y. 45-49.

425.

B had judgment. The contract that if B became dissatisfied he, A, would take the bonds back and return to B the money paid therefor was not within the Statute of Frauds.

Fitzpatrick v. Woodruff, 96 N. Y. 561.

426.

No. The fact that the defendant made repairs and changes in the locomotive after the accident was immaterial and not competent on the question of negligence.

"Whether the defendants were negligent was a question to be decided upon the facts as they existed at the time of the injury. What the defendants did afterward was immaterial." * * * "It would be plainly unjust to the defendants that they should not take additional precautions against accidents, without the risk that these precautions should be construed into an admission of prior negligence."

Corcoran v. Village of Peekskill, 108
N. Y. 151.

Getty v. Town of Hamlin, 127 N. Y.
636.

Columbia & Puget Sound R. Co. v. Hawthorne, 144 U. S. 202.

427.

Admit. Declarations against interest.

"The declarations of a testator or intestate, binding him or binding or impairing his estate, may be given in evidence against his personal representatives, in all cases where they would have been competent against himself, if he had been living and a party to the action."

Hurlburt v. Hurlburt, 128 N. Y. 420.

Vide Tompkins v. Fonda Glove Lining Co., 188 N. Y. 261, at pp. 264. 265.

428.

The ruling was wrong.

The wife's letter was "a deliberate *ex parte* narrative of facts and opinions and is inadmissible against the defendant."

Whitman v. Egbert, 27 App. Div. 374.

Buchanan v. Foster, 23 App. Div. 542.

429.

The Court admitted the declaration of the party plaintiff and excluded those made by the witness B, who was not a party to the action.

"The statements of a party can always be given in evidence against him, whether he is a witness or not. It is not necessary to examine him previously as to whether he has made such statements."

Kennedy v. Woods, 52 Hun, 50.

Root v. Brown, 4 Hun, 797.

16 Cyc. 1038.

The rule is different as to witnesses not parties.

The testimony of a witness may be contradicted if it has reference to statements made to others, provided his attention is first called to the time, place, and person to whom the statement is claimed to have been made and if denied, such person may then be called to contradict him, thus discrediting his testimony as a witness.

Ankersmit v. Tuch, 114 N. Y. 55.

McCulloch v. Dobson, 133 N. Y. 114.

People v. Mallon, 116 App. Div. 430.

430.

Objection overruled and testimony admitted.

"An unsworn statement concerning matters of genealogy, may, if relevant, upon an issue of pedigree, be admitted on account of the necessity of the case."

16 Cyc. 1223, 1224.

People v. Fulton Fire Ins. Co., 25 Wend.
205.

Hearsay evidence is competent in an issue of pedigree.

Eisenlord v. Clum, 126 N. Y. 552.

Washington v. Bank for Savings, 171
N. Y. 166.

431.

Both requests were refused.

A defendant indicted for receiving stolen property knowing the same to have been stolen, may be tried and convicted either in the county where he originally received the stolen property or in any county in which he afterwards had it.

Penal Law (Laws 1909, chap. 88),
sec. 1308.

Wills v. People, 3 Park. 473.

432.

Not correct. Proof of good character in itself may create a doubt sufficient to warrant an acquittal, even if the rest of the evidence should otherwise appear conclusive.

People v. Elliott, 163 N. Y. 14.

People v. Bonier, 179 N. Y. 315.

People v. Pekarz, 185 N. Y. 470.

People v. Van Gaasbeck, 118 App. Div.
511.

12 Cyc. 417.

433.

No, he cannot be.

"The burning of a building under circumstances which show beyond a reasonable doubt that there was no intent to destroy it, is not arson.

Penal Law (Laws 1909, chap. 88),
sec. 225.

Provided the building is one mentioned in Penal Law, section 223, the unlawful burning of which constitutes arson in the third degree.

People v. Fanshawe, 137 N. Y. 68.

434.

Yes.

"The general rule is that the owner of property is not liable for the negligent acts of an independent contractor with whom he has an agreement for the performance or prosecution of work. But to this rule there is an exception. If the work itself creates the danger or injury, then the ultimate superior or proprietor is liable to persons injured even though the work is intrusted to an independent contractor.

Mullins v. Siegel Cooper Co., 183 N. Y. 136.

In addition an abutting owner is responsible to travelers for defects in the highway caused by himself.

Id., p. 136; citing Dillon on Municipal Corporations, sec. 1012, and cases there cited.

City of Rochester v. Campbell, 123 N. Y. 405, 417.

435.

The contractor is not liable. The act of blasting was a lawful act, and as it was not done in a negligent or improper manner, nor with want of skill, and as the premises of plaintiff were not invaded by projectiles of any kind, there was no trespass; the injury was consequential and A has no legal ground of complaint.

Page v. Dempsey, 184 N. Y. 245.

436.

No.

"An intent to defraud may not be imputed to a purchaser of property on credit merely from the facts that he was, to his knowledge, insolvent at the time of the purchase, and that he omitted to disclose such condition to his vendor;

these must be accompanied by facts disclosing an intent to acquire the property without paying for it."

Morris v. Talcott, 96 N. Y. 100.

Shotwell v. Dixon, 163 N. Y. 52.

437.

The bequest is valid to the extent of one-half of the husband's estate and no more. "No person having a husband, wife, child or parent, shall by his or her last will and testament, devise or bequeath to any benevolent, charitable, literary, scientific, religious or missionary society, association or corporation in trust or otherwise, more than one-half part of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid to the extent of one-half, and no more."

Decedent Estate Law (Laws 1909, chap. 18), sec. 17.

The missionary society gets one-half of the estate, the husband dies intestate as to the other half of which the wife receives one-third and the child two-thirds.

Id., sec. 98.

438.

Peter. The Statute so provides. The devise does not lapse, because Peter is a descendant of John, who was the son of the testator and the person to whom the devise was originally made.

"Whenever any estate, real or personal, shall be devised or bequeathed to a child or other descendant of the testator, and such legatee or devisee shall die during the lifetime of the testator, leaving a child or other decedent who shall survive such testator, such devise or legacy shall not lapse, but the property so devised or bequeathed shall vest in the surviving child or other descendant of the legatee or devisee, as if such legatee or devisee had survived the testator and had died intestate."

Decedent Estate Law (Laws 1909, chap. 18), sec. 29.

[*Vide* Pimel v. Betjemann, 183 N. Y. 201, 202, per Vann, J.

439.

The legacy was void because John was one of the two subscribing witnesses to the will which could not be proved without his testimony.

But, as John was the son of the testator, and would have been entitled to a share of the testator's estate in case the will was not established "Then so much of the share that would have descended or have been distributed to such witness shall be saved to him, as will not exceed the value of the devise or bequest made to him in the will, and he shall recover the same of the devisees or legatees named in the will in proportion to, and out of the parts devised and bequeathed to them."

Decedent Estate Law (Laws 1909, chap. 18), sec. 27.

440.

The trust is invalid after John reaches forty-five as against creditors and the judgment is collectible therefrom.

"It is contrary to sound public policy to permit a person to have the absolute and uncontrolled ownership of property for his own purposes, and to be able at the same time to keep it from his creditors."

The property is John's for the asking and no words can make an instrument strong enough to hold it for John and keep it from his creditors.

Ullman v. Cameron, 186 N. Y. 339.

441.

Under the facts stated a Court of equity would entertain jurisdiction and compel specific performance. "The rule is that, as to contracts pertaining to personal property, a party should be confined to his action for damages, unless it appears that he is entitled to the thing contracted for in specie, which to him has some special value and which he cannot readily obtain in the market, or in cases where it is apparent that compensation in damages would not furnish a complete and adequate remedy."

Butler v. Wright, 186 N. Y. 259, at 262
and cases cited.

442.

The transaction is illegal. Equity will not interfere and will leave the parties where it finds them.

Nellis v. Clark, 20 Wendell, 24.

Knowlton v. Congress & E. S. Co., 57
N. Y. 518; 166 N. Y. 360.

“He who comes into equity must come with clean hands.”
16 Cyc. 144, 146 and cases cited.

443.

The proxy was invalid. The Statute provides that no officer, clerk, teller or bookkeeper of a corporation formed under or subject to the banking laws shall act as proxy for any stockholder at any meeting of such corporation.

General Corporation Law (L. 1909,
chap. 28), sec. 26.

444.

Yes. A can make an application to the Supreme Court, on notice to the corporation, for an order requiring it to issue to him a new certificate of stock in place of the one destroyed.

Stock Corp. Law (L. 1909, chap. 61),
sec. 67.

445.

Motion denied. In action brought by or against a corporation, the plaintiff need not prove upon the trial the existence of the corporation unless the answer is verified and contains an affirmative allegation that the plaintiff or the defendant as the case may be is not a corporation.

Code of Civil Procedure, sec. 1776.

446.

Judgment for C. Under the statute A was entitled to compensation for her services and the payment thereof by

C discharged the claim against him, there being no express agreement to the contrary, B had no interest in A's wages and could not recover.

Domestic Relations Law (Laws 1909, chap. 19), sec. 60.

447.

Advise him to procure a writ of Habeas Corpus from the Supreme Court and that upon its return the Court will award his custody to the parent it thinks proper and for the best interests of C with such conditions as the case may require.

Domestic Relations Law (Laws 1909, chap. 19), sec. 70.

448.

B and C took equally. The testator and C occupied toward each other the legal relation of parent and child and possessed all the rights and were subject to all the duties of such relation including inheritance from each other.

Domestic Relations Law (Laws 1909, chap. 19), sec. 114.

Van Beck v. Thomsen, 44 App. Div. 373, aff'd 167 N. Y. 601.

Dodine v. Dodine, 40 N. Y. Supp. 748.

449.

It was invalid. It was in conflict with the New York State Constitution which forbids the Legislature to pass any private or local bill granting to any person an exemption from taxation on real or personal property.

N. Y. S. Constitution, art. 3d, sec. 18.

450.

Judgment for B. The Statute extending the term of office after it had been established by the Legislature was

not constitutional as it was an attempt by the Legislature to exercise the power of appointment.

People ex rel. Bull, 46 N. Y. 57.

People ex rel. Williamson v. McKinney, 52 N. Y. 374.

451.

Vide answer to Question No. 356, page 122.

452.

C can maintain a proceeding to compel A to remove such newsstand. He may apply for a peremptory writ of mandamus to compel A to remove the same as it is a proceeding to enforce a right in which the general public is interested.

People ex rel. Pumpyansky v. Keating,
168 N. Y. 390.

453.

It can be maintained. However improvident the injunction granted, may have been, it must be obeyed and the party who disobeys it will be punishable for contempt as the Court had jurisdiction to grant it.

Erie R. R. v. Ramsey, 45 N. Y. 637.

People ex rel. Cauffman v. Van Buren,
136 N. Y. 252.

454.

Move to withdraw a juror and postpone the trial to a subsequent time when you can obtain the attendance of the witness or his testimony.

Glendening v. Canary, 5 Daly, 489, affd.
64 N. Y. 636.

Dillon v. Cockroft, 90 N. Y. 649.

2 Rumsey's Practice, 332.

455.

He has. Upon establishing the mistake C might apply at that term of the Court and the Court might correct its

record so as to make it conform to the actual findings of the jury.

Dalrymple v. Williams, 63 N. Y. 361.

Hodgkins v. Mead, 119 N. Y. 167.

456.

Judgment for A. The judgment was one directing the payment of sums of money within the meaning of section 1240 of the Code of Civil Procedure; that it was entitled to be docketed by the proper clerk and was enforceable by execution and not by proceedings for contempt.

Harris v. Elliott, 163 N. Y. 269.

457.

Objection overruled.

"An agreement made between parties prior to or contemporaneously with their executing a written obligation as sureties, by which one promises to indemnify the other from loss, does not contradict or vary the terms or legal effect of the written obligation and may be proved by parol evidence."

Barry v. Ransom, 12 N. Y. 462.

Wills v. Miller, 66 N. Y. 255.

Easterly v. Barber, 66 N. Y. 436.

458.

The objection was overruled. The conversation was not confidential as it was not expressly made so nor was it of a confidential nature or induced by the marital relation.

Parkhurst v. Berdell, 110 N. Y. 386-393.

Warner v. P. P. Co., 132 N. Y. 186.

459.

The motion was denied. The Court could take judicial cognizance of the population of the county only when it was authenticated by a public record.

Adams v. Elwood, 176 N. Y. 106.

460.

Objection overruled. Section 829 of the Code of Civil Procedure expressly provides that a person shall not be deemed interested for the purpose of that section by reason of being a stockholder or officer of any banking corporation which is a party to the action or interested in the event thereof.

Code of Civil Procedure, sec. 829.

461.

Objection was overruled. The evidence was admissible as part of the *res gestae*, and to show that the chattel mortgage was given with an intent to defraud B's creditors.

Potts v. Hart, 99 N. Y. 168, 173.

462.

The people. While the defendant was presumed to be sane, upon which presumption the prosecution might rest without proof, yet where evidence was given tending to establish insanity, then the question was whether the crime, if committed, was committed by a person responsible for his acts, and the affirmative was held by the prosecution.

Brotherton v. The People, 75 N. Y. 159.

People v. Tobin, 176 N. Y. 278, 285.

People v. Spencer, 179 N. Y. 408, 411.

463.

C has the title to the farm. B is estopped from disputing C's title and from setting up his unrecorded destroyed deed against it.

23 Am. & Eng. Ency. Law (2d ed.),
p. 994.

Lawrence v. Stratton, 6 Cush. (Mass.)
163.

464.

B and C each owned one-half as tenants in common.

"A tenancy by the entirety is founded upon the marital relation and upon the legal theory that the husband and

wife are one. It depends for its continuance upon the continuance of the relation, and when the unity is broken by a divorce the tenancy is served; each takes a proportionate share of the property as a tenant in common."

Stelz v. Shreck, 128 N. Y. 263.

In case of a divorce dissolving the marriage contract, for the misconduct of the wife, she shall not be endowed.

Real Property Law (Laws 1909, chap. 52), sec. 196.

Vide Code Civil Procedure, sec. 1760.

14 Cyc. 934.

Price v. Price, 124 N. Y. 589.

Matter of Ensign, 103 N. Y. 286.

Fowler's Real Property Law (2d ed.), p. 575.

C, the son, took title to his father's real estate by descent free from his mother's dower.

Decedents' Estate Law (chap. 18, Laws 1909), sec. 81.

465.

The wheat belongs to the administrators of B and they have the right to enter upon the farm and harvest it. It is an emblement; a crop which grows yearly and is raised by industry and labor; it is called "*fructus industriales*." (15 Cyc. 537-8.)

"A tenant for life or his legal representative is entitled to emblements, that is, the crops planted by him prior to the termination of the life estate, in all cases where the life estate is terminated by the act of God, as by the death of the tenant" (16 Cyc. 620).

"The doctrine of emblements is founded entirely on the uncertainty of the termination of the tenant's estate. Where that is certain there exists no title to the emblements."

Whitmarsh v. Cutting, 10 John. Rep. 360, 361.

Stewart v. Doughty, 9 John. Rep. 108.

Pfanner v. Sturmer, 40 Howard, 401.

Batterman v. Albright, 122 N. Y. 484.

466.

Court granted defendant's motion for a nonsuit.

The contract for a portrait of B's wife to his satisfaction was one "involving taste, fancy, interest, personal satisfaction and judgment." (Crawford v. M. & E. Pub. Co., 163 N. Y. 408.) It differed from commercial contracts wherein that which the law will say a contracting party ought in reason to be satisfied with, that it will say he is satisfied with. (Duplex Safety Boiler Co. v. Garden, 101 N. Y. 387.) In the contract in question, neither the court nor the jury had the right to decide that the defendant was or ought to be satisfied with the portrait, if his opinion was honestly entertained.

Moore v. Goodwin, 43 Hun, 534.

Barry v. Rainey, 27 Misc. 772.

Vide generally:

Smith v. Robson, 148 N. Y. 252.

Hoffman v. Gallagher, 6 Daly, 42.

Parker v. Hyde, 53 Misc. 549.

Hummel v. Stern, 15 Misc. 27.

467.

Yes. B's defense was successful.

Part payments made by one of two or more joint and several makers of a note does not take the note out of the Statute of Limitations as to the others, and this whether such payment is made before or after the debt has been barred. The common liability of several for a debt does not of itself make each the agent of the others to bind them by part payment. The part payment must be made by the debtor or by his authority in order to take the case out of the statute.

Murdock v. Waterman, 145 N. Y. 55,
63, 64; citing, Van Keuren v.
Parmelee, 2 N. Y. 523.

Shoemaker v. Benedict, 11 N. Y. 177.

Vide, Connecticut Trust Co. v. Wead,
33 Misc. 374.

Mack v. Anderson, 165 N. Y. 529.

468.

No. A was not liable as a partner.

"A person who has no interest in the business of a firm, or in the capital invested, save that he is to receive a share of the profits, as a compensation for services, or for money loaned for the benefit of the business is not a partner and cannot be held liable as such by a creditor of the firm."

Richardson v. Hughitt, 76 N. Y. 55.

Eager v. Crawford, 76 N. Y. 97.

Cassidy v. Hall, 97 N. Y. 159.

Hackett v. Stanley, 115 N. Y. 631.

First N. B. v. Gallaudet, 122 N. Y. 657; Meehan v. Valentine, 145 U. S. 624.

469.

B's transaction was legal. D has neither rights nor remedy. The question assumes that there was no bankruptcy law.

"A firm, although insolvent, has a right to make preferences among its creditors and one partner may transfer the partnership effects directly to a firm creditor in payment of his debt. without the knowledge or consent of his co-partner."

Bulger v. Rosa, 119 N. Y. 459.

Schwarzschild & S. Co. v. Matthews, 39 App. Div. 477.

470.

Judgment for B. The sole defense pleaded was failure of consideration.

The exchange of the notes was a consummated transaction; each note constituted a good consideration for the other, and there was no failure of consideration, even though one of the notes was not paid at maturity.

Eaton & Gilbert on Com. Paper (2d ed.), p. 281.

Rice v. James, 131 N. Y. 149.

State Bank v. Smith, 155 N. Y. 196.

Milius v. Kaufman, 104 App. Div. 444.

471.

Judgment for A, the defendant.

"Proof that a promissory note was fraudulent as between the payee and maker shifts to a transferee suing thereon, the burden of proof and it becomes necessary for him to show not only payment of value by him, but the circumstances under which he became the holder of the note."

Citizens' N. B. v. Weston, 162 N. Y. 113.

Douai v. Lutjens, 21 App. Div. 254; affd.; 165 N. Y. 622.

Citizens' Bank v. Cowles, 89 App. Div. 285.

Eaton & Gilbert on Com. Paper (2d Ed.) p. 393.

472.

The merchant is liable.

The course of dealing between the parties gave the right to the broker to assume the authority of the agent and the bona fides of the note in the absence of knowledge or circumstances to put him on inquiry and he was justified in discounting the same.

Exchange Bank v. Monteath, 26 N. Y. 505.

Debold v. Opperman, 111 N. Y. 540.

473.

Yes. "The law will not endure that a principal shall keep the product of the agent's act and yet repudiate his authority. Even in the case of fraudulent representations by the agent, never at all authorized or suspected by the principal, a reception and retention of the proceeds may make the latter responsible for the fraud."

Coykendall v. Constable, 99 N. Y. 314.

National Life v. Minch, 53 N. Y. 144.

Krumm v. Beach, 25 Hun, 293; affd., 96 N. Y. 398.

Jones v. Jones, 120 N. Y. 599.

474.

A, the surety, is discharged.

"A surety will be discharged by any arrangement between the principal debtor and the creditor which operates as a fraud upon the surety; as where the money has been offered to the creditor, and he without the consent of the surety requested the debtor to hold it longer."

Sailly v. Elmore, 2 Johns. Ch. 496.

Griswold v. Jackson, 2 Edwards Ch.
461.

475.

A has no claim against B, under the circumstances stated.

"The obligation of one of two co-sureties is to pay the whole debt. His right is, if he pays the whole debt, to recover one-half from his co-surety or the whole from the principal. If he pays less than the whole debt, he cannot recover from his co-surety, though he may from the principal, more than the amount which he has paid in excess of the moiety which, as between him and his co-surety, it was his duty to pay."

Morgan v. Smith, 70 N. Y. 537.

Wanamaker v. Powers, 102 App. Div.
493.

Hood v. Hayward, 124 N. Y. 16.

476.

Judgment for A. The liability of an insurer upon a building destroyed by fire is not affected in the absence of any exemption in the policy, by the fact that it cost the owner nothing, or that he might compel another person to replace it without expense to him.

Foley v. Manufacturers' Ins. Co., 152
N. Y. 131.

Michael v. Prussian Nat. Ins. Co., 171
N. Y. 39.

477.

Judgment for plaintiff. The exemption from liability for death from inhaling of gas referred only to a voluntary and intelligent act of the insured and not to an involuntary and unconscious one and therefore a recovery might be had for death caused by the accidental inhalation of illuminating gas.

Paul v. Travellers Ins. Co., 112 N. Y. 472.

Menneiley v. Employers' Liability Assurance Corporation, 148 N. Y. 596.

478.

Yes. Where the vessel was lost through the negligence of such owner under the circumstances stated, he is liable to the co-owners for the loss. He was in no sense the agent of the co-owners, but was the owner of the vessel, *pro hac vice*.

Williams v. Hays, 143 N. Y. 442 (S. C., 157 N. Y. 541).

The Barnstable, 181 U. S. 468.

479.

The title was in B and the contract was in the nature of a bailment.

Mack v. Snell, 140 N. Y. 193.

480

The Court refused the requests.

The contract of sale was fully executed, delivery was had and the money paid; it could not be rescinded.

The proper measure of damages was the difference between the value of the article if it had been as warranted and the actual value, and not the purchase price.

Isaacs v. Wanamaker, 189 N. Y. 122.

481

B has no rights against A. The contract was entire and the part as to the sale of the automobile being void under the Statute of Frauds, the entire contract was unenforceable.

20 Cyc., 285.

"If part of an entire contract is void under the Statute of Frauds, the whole is void: a party will not be permitted to

separate the parts of an entire agreement, and recover on one part, the other being void."

De Beerski v. Paige, 36 N. Y. 537.

482

The Court directed that A be tried separately.

"When two or more defendants are jointly indicted for a felony, any defendant requiring it, must be tried separately. In other cases, defendants jointly indicted, may be tried separately or jointly in the discretion of the Court."

Code of Criminal Procedure, sec. 391.

483

A is guilty of manslaughter in the second degree.

Homicide is manslaughter in the second degree when committed without design to effect death, by any act, procurement or culpable negligence of any person, which according to the provisions of the Penal Law does not constitute the crime of murder in the first or second degree or manslaughter in the first degree.

Penal Law, sec. 1052 (Laws 1909, chap. 88).

Vide, 2 Park. Cr. Repts. 16.

People v. Beckwith, 103 N. Y. 360.

484.

All were convicted of murder in the second degree.

"A person who, by previous appointment made within the state, fights a duel without the state, and in so doing inflicts a wound upon his antagonist, whereof the person injured dies; or who engages or participates in such a duel, as a second or assistant to either party, is guilty of murder in the second degree, and may be indicted, tried and convicted in any county of this state."

Penal Law, secs. 1047, 735, 736.

Code of Criminal Procedure, sec. 133.

485.

The Court decided to grant the order. Its object is to obtain testimony concerning the nature and extent of plaintiff's alleged personal injuries for use upon the trial, so as to

aid the Court and jury in the correct determination of the issue of fact raised by the pleadings thereon.

Vide, Lyon v. M. R. Co., 142 N. Y. 298.

Tirpak v. Hoe, 53 Misc. 532.

Code Civil Procedure, secs. 870, 873.

486

A's motion for a nonsuit denied.

"A false and fraudulent representation, made with intent to deceive, as to material facts which necessarily affect the value of the shares of stock in a corporation, constitutes a cause of action against the party making it, where by means thereof he has induced another to purchase such shares."

Schwenk v. Naylor, 102 N. Y. 683.

A recovery can be had of the party in such a case although he has received no benefit from the transaction.

Mack v. Latta, 178 N. Y. 529.

487

Judgment for A the infant defendant.

In this case the plaintiff "retains the benefit of the contract, he does not disaffirm it. His action rests on the ground that he has made a contract and it is necessary for his recovery that he should show that a binding contract has been made. Then infancy becomes a defense. The infant says there has been no binding contract; no action therefore lies for fraud in respect to a contract he could not make. The alleged contract is the substantive ground of, or the inducement to, the cause of action; for, if there was no contract, then there could be no fraud in the making of it, and disproving the contract, defeats the action. * * * Infancy is a bar."

Hewitt v. Warren, 10 Hun, 560, 565.

Vide, Little v. Gallus, 4 App. Div. 584.

"A cause of action in contract cannot be changed to a tort in order to deprive the infant of the benefit of the plea of infancy."

22 Cyc. 621.

488.

B should have judgment.

"Where a legacy is given, and is directed to be paid by the executor who is a devisee of real estate, such estate is charged with the payment of the legacy; and the devisee upon accepting the devise becomes personally bound to pay the legacy; and this although the land devised to him proves to be less in value than the amount of the legacy."

Brown v. Knapp, 79 N. Y. 136.

Clift v. Moses, 116 N. Y. 153.

489.

The widow, and the two sons, B and C, take the amount of the legacy which failed. Each takes a third under the Statute of Distributions (Code Civil Procedure, sec. 2732, subd. 1), for as to that A died intestate, as though he had left no will.

"Where a testator fails to make a legal devise * * * or having legally devised it, the devise fails for any cause, the heir will inherit notwithstanding there is an express provision in the will that he shall not take any part of the estate."

Gallagher v. Crooks, 132 N. Y. 338.

Herzog v. Title Guarantee & T. Co., 177
N. Y. 97, 98.

Pomroy v. Hincks, 180 N. Y. 73.

490.

The brother, sister and E each inherit one-quarter; B, C and D inherit the remaining quarter collectively in equal shares.

A died intestate without lawful descendants and left neither father nor mother, hence his brothers and sisters and their descendants inherit his real property. The brother and sister inherit a quarter each, E inherits the share his parent would have received, if living, and B, C and D collectively inherit the share which their parent would have received, if living.

Decedent Estate Law (Laws 1909,
chap. 18), sec. 87.

491.

Judgment for B. It does not appear that B made any representations as to the acreage of the estate, nor as to its boundaries (*Paine v. Upton*, 87 N. Y. 327; *Belknap v. Sealey*, 14 N. Y. 143). B was not obliged to state the acreage if not requested (*Dambmann v. Schulting*, 75 N. Y. 55; *Stettheimer v. Killip*, *id.* 282). A relied on his own investigation and although he was mistaken, B made no representations and was not guilty of fraud, hence equity will not interfere. (*Northrop v. Sumney*, 27 Barbour, 196.)

Mere mistake by one of the parties in the absence of fraud in the other not sufficient to afford relief in equity. (*Stettheimer v. Killip*, 75 N. Y. 282; *Stern v. Ladew*, 47 App. Div. 340.)

492.

Permission should be denied. "Damages, as in an action at law, cannot be given in equity where the plaintiff has failed to establish his right to equitable relief." (*Sadlier v. City of New York*, 185 N. Y. 414, per Chase, J.; *Sullivan v. Traders Ins. Co.*, 169 N. Y. 213; *Baily v. Hornthal*, 154 N. Y. 648; *Murtha v. Curley*, 90 N. Y. 372), and there is nothing special in an action to foreclose a mortgage, where the execution of the bond is alleged, to take the case out of the general rule (*Dudley v. Congregation, etc., of St. Francis*, 138 N. Y. 451; *Reichert v. Stilwell*, 172 N. Y. 89).

493.

The deed, though absolute in form, was in fact a mortgage. The tender and refusal amounted to a payment of the debt (if kept good) and A can bring an action in equity to have the deed declared a mortgage and cancelled of record.

James v. Johnson, 6 Johns. Ch. 417.

Murray v. Walker, 31 N. Y. 399.

Thompson v. Hickey, 8 Abb. N. C. 159.

Barry v. Hamburg-Bremen Fire Ins. Co., 110 N. Y. 5.

Shattuck v. Bascom, 105 N. Y. 40.

494.

The value of each share shall not be less than five nor more than one hundred dollars.

The amount of capital not less than five hundred dollars, with which said corporation will begin business.

The Business Corporations Law (L. 1909, chap. 12), sec. 2.

495.

A, the plaintiff, should have judgment.

In the absence of knowledge of the by-law, A was justified in assuming that X, as general agent to purchase supplies, had the right to make contracts within the scope of his agency and carry his authority into effect.

Rathbun v. Snow, 123 N. Y. 343.

A general agent of a corporation has power, *prima facie*, to do any act which the directors could authorize or ratify.

Hastings v. B. L. Ins. Co., 138 N. Y. 479.

Oakes v. C. W. Co., 143 N. Y. 436.

496.

A is liable.

One who receives from the officer of a corporation, the check of the corporation to pay for the personal debt of such officer does so at his peril. *Prima facie* the act was unlawful and unless actually authorized, A will be deemed to have taken the same with notice of the rights of the corporation.

Rochester & C. T. R. Co. v. Paviour, 164 N. Y. 281, 192 N. Y. 61.

Reynolds El. Co. v. Merchants Nat. Bank, 55 App. Div. 5.

Orr v. South Amboy T. C. Co., 113 App. Div. 104.

Wilson v. M. E. R. Co., 120 N. Y. 150.

Manhattan L. Ins. Co. v. F. S. S. & G. S. F. R. R. Co., 139 N. Y. 151.

497.

The neighbor. The father's notification should have been in writing.

Dom. Rel. Law (Laws 1909, chap. 19),
sec. 72.

Vide McClurg v. McKercher, 56 Hun,
305.

498.

Judgment for the husband.

The fact that the husband and wife were living apart being known to the grocer, cast the burden upon him of showing that the wife's act in living apart was justified, for the fact negatived the presumption of the wife's agency.

Buxbaum v. Mason, 48 Misc. 396.

"If, through no fault of the husband the wife leaves his home and refuses to cohabit with him, he is not responsible for her necessities, and persons furnishing her with the same cannot, under such circumstances, collect from the husband. The mere fact that the wife is living apart from her husband is sufficient notice to tradesman to institute inquiries and those who give credit to her do so at their peril. * * * The burden of proof is on the tradesman to show that the separation has taken place under such circumstances as will render the husband liable."

21 Cyc., 1223, 1224.

499.

The statute is a valid exercise of legislative power. It makes provision for compensation and leaves nothing open to litigation except the title to the property taken, and the amount of damages which the owner may recover.

Litchfield v. Bond, 186 N. Y. 74.

500.

No.

"It is a firmly established principle of law that no one can be allowed to attack a statute as unconstitutional who

has no interest in it and is not affected by its provisions."

8 Cyc., 787, 788.

"One who does not belong to the class that might be injured by a statute cannot raise the question of its invalidity."

Red River Nat. Bk. v. Craig, 181 U. S.
548 (45 L. ed. 994).

501.

STATE OF NEW YORK, }
ALBANY CITY AND COUNTY, } ss.:

John Doe, being duly sworn, deposes and says, that on the second day of January, 1909, at the city of Albany, N. Y., he personally served the annexed subpœna on Richard Roe, the person therein named as a witness, by then and there exhibiting to him said original subpœna and delivering to him in person a subpœna ticket containing its substance, and at the same time paying to him the sum of one dollar and thirty cents, the fees allowed by law for traveling to and returning from the Court named in the said subpœna, and for one day's attendance thereat.

Sworn to before me this 3rd

day of January, 1909.

JOHN DOE.

A. B.

Commissioner of Deeds,

Albany, N. Y.

Code of Civil Procedure, sec. 820.

Fifty cents witness fee for one day's attendance and eighty cents traveling fee, the witness residing more than three miles from the place of attendance.

Code of Civil Procedure, sec. 3318.

502.

No. There is no writ obtainable for the purposes stated.
A writ of Prohibition (Code of Civil Procedure, secs. 2091—

2102) will not issue, for its sole province is to prevent an inferior tribunal from usurping a jurisdiction which it does not possess.

People ex rel. Livingston v. Wyatt, 186 N. Y. 393.

People ex rel. Jones v. Sherman, 66 App. Div. 231, affd. 171 N. Y. 684.

Petit larceny is a misdemeanor (Penal Law, Laws 1909, chap. 88, sec. 1299) of which a justice of the peace has jurisdiction.

Code of Criminal Procedure, secs. 56, 62, 147.

503.

"A, without cause or provocation, violently assaulted and beat B to his damage." That presents a state of facts wherein B has an action predicated thereon against A to recover damages for a personal injury, in which action an order of arrest will issue as provided in section 549 of the Code of Civil Procedure.

Vide, the section generally for other causes of action in which an order of arrest may be granted.

504.

The Court will overrule plaintiff's demurrer to defendant's answer.

"A demurrer searches the record, and a demurrer to a bad answer cannot prevail, if the complaint be not good."

Schiefer v. Freygang, 125 App. Div. 499.

Baxter v. McDonnell, 154 N. Y. 436.

505.

Yes. "It is a well settled rule in this state that the party holding the affirmative upon an issue of fact has the right, upon the trial, to open and close the proof, and to reply in summing up the case to the jury. This is regarded as a legal right, not resting in the discretion of the Court,

and a denial thereof may be excepted to and the ruling reviewed upon appeal."

Heilbrown v. Herzog, 165 N. Y. 100,
101.

L. O. N. Bank v. Jordan, 122 N. Y. 278.
Conselyea v. Swift, 103 N. Y. 604.

506.

Ten years.

Code of Civil Procedure, sec. 1251.

507.

The Court denied the motion to acquit.

"On the trial of an indictment for forgery, it is not necessary that the person whose name is alleged to have been forged be produced as a witness and testify that he did not sign the paper or authorize the signature. These facts may be proved by other evidence."

People v. Browne, 118 App. Div. 793,
affd. 189 N. Y. 528.

508.

The Court sustained the objection.

The declarations of B made after the transaction was completed, as to the intent with which he executed the bill of sale, are incompetent and inadmissible as against A in an action wherein the bill of sale is assailed as fraudulent.

Spaulding v. Keyes, 125 N. Y. 113.

Lent v. Shear, 160 N. Y. 462.

Wagner v. Grimm, 169 N. Y. 421, 431,
432; 16 Cyc. 992.

509.

The Surrogate sustained the objection.

"In proceedings for the probate of a will which is contested on the ground that there was no due publication of the will, a beneficiary under it is incompetent to testify to any conversation or transaction in his presence at the time

of its execution and publication. What occurred at that time is a transaction between the testator and the witness within the meaning of the Code of Civil Procedure (sec. 829), although the witness took no actual part in the conversation, and it was wholly between the testator and the attesting witnesses."

Matter of Bernsee, 141 N. Y. 389.

Boyd v. Boyd, 164 N. Y. 245.

Hatton v. Smith, 175 N. Y. 375, 381,
382.

Burdick v. Burdick, 180 N. Y. 261.

510.

The Court overruled the objection and allowed the testimony.

Communications made to an attorney in the presence of third persons are not privileged nor covered by section 835 of the Code of Civil Procedure.

People v. Buchanan, 145 N. Y. 1, 26.

Doheny v. Lacy, 168 N. Y. 224.

Matter of King v. Ashley, 96 App. Div.
145.

511.

The Court should sustain the objection.

The fact that C settled with A is not to be taken as an admission of his liability to B. Evidence thereof is not competent, for that purpose, in a litigation of the claim of another party arising out of the same transaction.

Slingerland v. Norton, 58 Hun, 578.

512.

The Court overruled the objection and admitted the testimony.

The testimony is admitted to show guilty knowledge of the character of the act committed by the prisoner.

"In the trial of an indictment for passing counterfeit money, evidence of the passage of like money within a rea-

sonable time before or after the commission of the offense for which the prisoner is on trial is admitted for the purpose of showing that when he passed the money in question, it was not through ignorance of its character."

People v. Sharp, 107 N. Y. 467.

People v. Shea, 147 N. Y. 99.

People v. Rogers, 192 N. Y. 351.

513.

Judgment for B. D based his claim on curtesy.

"An estate by the curtesy does not attach to property conveyed to a wife, subject to the use and occupation of another during life, where she was never in actual possession of the property and she died before the determination of the life estate."

Collins v. Russell, 184 N. Y. 74.

514.

A has neither rights nor remedies.

"Where the delivery of a deed is intended to give effect thereto without the further act of the grantor, any oral condition accompanying the delivery would be repugnant to the terms of the deed, and parol evidence to prove that there was such a condition attached to its delivery is inadmissible in an action to cancel or set it aside."

Hamlin v. Hamlin, 192 N. Y. 164, 168, 169.

515.

Judgment for B.

"A grant of real property is absolutely void, if at the time of the delivery thereof, such property is in the actual possession of a person claiming under a title adverse to that of the grantor."

Real Property Law, Laws 1909, chap. 52, sec. 260.

Baechl v. Hevesy, 115 App. Div. 509.

Gerard on Titles to Real Estate (5th ed.) p. 545.

516.

B has a cause of action against A for damages predicated upon his unlawful discharge, for the injury he has sustained in not being allowed to serve and earn the wages agreed upon.

Howard v. Daly, 61 N. Y. 369.

“When, on the expiration of a written contract of employment for one year, the servant remains in his master’s employ without agreement limiting the subsequent period of his employment, the law implies a renewal of the contract upon the same terms for another year.”

Mendelson v. Bronner, 124 App. Div. 396.

517.

Judgment for A.

“Where a contract is made for the sale and delivery of specified articles of personal property, under such circumstances that the title does not vest in the vendee, if the property is destroyed by an accident, without the fault of the vendor, so that delivery becomes impossible, the latter is not liable to the vendee in damages for the nondelivery.”

Dexter v. Norton, 47 N. Y. 62.

Buffalo & L. Land Co. v. Bellevue L. & I. Co., 165 N. Y. 254; 197 N. Y. 170.

518.

The firm of A. & D. has neither rights nor remedies.

C made no contract for the purchase of coal from the firm of A. & D. and is under no obligation to take the coal from it.

Piper v. Seager, 111 App. Div. 113.

519.

The receiver can recover.

“One partner cannot apply the partnership funds to the discharge of his own private debt without the consent of the other partner; * * * without such consent the title of

the partnership to the property is not divested in favor of the private creditor, whether the latter knows that the property belongs to the partnership or not; and * * * the right of the partnership depends not upon whether the creditor knew it was partnership property but rather upon the fact whether the other partners had assented to such application."

Baron v. Lakow, 121 App. Div. 545.

Rogers v. Batchelor, 12 Pet. (U. S.) 221.

520.

No.

C was a bona fide purchaser of the note after maturity and succeeded to the rights of B who was a holder in due course, who could recover on the note against A, although the same had been stolen from him.

Northampton Nat. Bank v. Kidder, 106
N. Y. 221.

521.

Yes.

"If a drawer of a check procures it to be certified the relations, duties and obligations between him and the payee or holder are the same as if such check had not been certified. It is only where the holder of the check procures its certification after its delivery to him that the drawers and indorsers are discharged and the bank itself substituted as a principal debtor."

Eaton & Gilbert on Com. Paper (2d ed.),
p. 635.

Negotiable Instruments Law (Laws 1909,
chap. 43), sec. 324, 5 Cyc. 541.

522.

X is not liable on the contract to A. A contract under seal can only be enforced against the party who upon the face of the instrument is the covenantor, although it appear by extrinsic proof that he acted for another. A did not

sign it himself nor did it purport to have been executed for him by his clerk.

Briggs v. Partridge, 64 N. Y. 360.

Kiersted v. O. & A. R. R. Co., 69 N. Y. 343, 345.

Elliott v. Brady, 192 N. Y. 221.

523.

C has a cause of action against B.

"A principal is liable, as a general rule, for such wrong of his agent as is committed in the course of his employment and for the benefit of his principal; and this although no express command or privity is proven."

Fishkill Sav. Inst. v. National Bank, 80 N. Y. 162.

N. Y. C. & H. R. R. Co. v. United States, U. S. Sup. Ct., Oct. Term, 1908.

524.

A, the surety, is not liable.

"A surety bound for the fidelity and honesty of his principal and so for an indefinite and contingent liability, and not for a sum fixed and certain to become due may revoke and end his future liability * * * where the guaranteed contract has no definite time to run."

Emery v. Baltz, 94 N. Y. 414.

Howe Machine Co. v. Farrington, 82 N. Y. 125.

20 Cyc. 1479.

Reilly v. Dodge, 131 N. Y. 158.

Picker v. Fitzelle, 60 App. Div. 453.

525.

A is liable.

"The mere failure of the plaintiff to enforce the security or secure the application of the property upon the debt does not relieve the defendant * * *. In order to exonerate

a surety by delay of the creditor to proceed against the principal, the surety must show explicit notice or request to the creditor to take legal proceedings to collect the debt or enforce the liability of the principal."

Howe Machine Co. v. Farrington, 82
N. Y. 121, 130, 131.
Newcomb v. Hale, 90 N. Y. 331.

526.

The policy is void and the insurance company is not liable. It became void before the fire by reason of nonoccupancy and in the absence of proof of waiver or consent on the part of the insurer to a continuance of the risk, no recovery can be lawfully had upon the policy. The policy is not revived by a subsequent occupancy which continues until the fire.

Couch v. Farmers' Insurance Co., 64
App. Div. 367.
Clements' Law of Fire Ins. (2nd ed),
vol. 2, p. 367.
Cooley's Briefs on Law of Insurance,
vol. 2, p. 1861.

527.

Yes. To X.

The policy having been procured by A in good faith, he had the absolute right to make it payable to any one without regard to insurable interest.

25 Cyc. 708.
Olmstead v. Keyes, 85 N. Y. 593.
Steinback v. Diepenbroch, 158 N. Y. 24.
Reed v. Provident S. L. A. Society, 190
N. Y. 118.

X, therefore, had at once a beneficial interest in the policy and could not be divested thereof even by A in the manner set forth in the question.

Central Bank of Washington v. Hume,
128 U. S. 195, 206.

Cook on Life Insurance, p. 123.
 Ferdon v. Canfield, 104 N. Y. 143.
 25 Cyc. 778.
 Sterritt v. Manhattan Life, 38 App. Div.
 599.

528.

The loss falls on the X Storage Company. The transaction was a bailment for hire. It is an "essential element of the contract that the bailee will use reasonable care to preserve the goods intrusted to his care, and if he proposes to be exempt from this part of the obligation, it must be done in language which cannot be mistaken and which gives full notice of the exception to the natural import of the transaction."

* * * "Hence, a provision that 'perishable goods are received at the owners risk,' does not relieve the bailee from liability for negligence."

Herzig v. N. Y. Cold Storage Co., 115
 App. Div. 40, affd. 190 N. Y. 511.

529.

Under the Factors Act (Personal Prop. Law, Laws 1909, chap. 45, sec. 43) Y, acting without knowledge, has an interest in the goods of X to the extent of the right and interest therein which was possessed or might have been enforced by the commission merchant at the time of the deposit thereof by him with Y.

Stevens v. Wilson, 6 Hill, 512.
 Howland v. Woodruff, 60 N. Y. 73.

530.

Yes; B can recover.

"A manufacturer who sells goods of his own manufacture impliedly warrants they are free from any latent defect growing out of the processes of manufacture."

Carleton v. Lombard Ayres Co., 149
 N. Y. 137.

This liability survived acceptance because the defect was latent and not discernible and the wheels were delivered under circumstances which rendered an inspection thereof impracticable.

Smith v. Coe, 170 N. Y. 162.

531.

Yes.

"Under a contract to sell and deliver goods, the vendee by accepting the goods after the time to deliver has passed, does not thereby waive his claim for damages caused by the delay and when sued for the purchase price may counterclaim such damage."

Beyer v. Huber Co., 115 App. Div. 342.
Law of Sales (Williston 1909), sec. 487.
132 App. Div. 250.

532.

The Court should refuse to so charge.

The prisoner having presented testimony as to his previous good character, is entitled to the benefit of the doubt as to his guilt which may have been caused thereby. Evidence of previous good character will sometimes of itself create a doubt when without it none would exist.

Remsen v. People, 43 N. Y. 8, 9.
People v. Elliott, 163 N. Y. 11.
People v. Bonier, 179 N. Y. 315.
People v. Pekarz, 185 N. Y. 470.

533.

The verdict is valid.

"If the indictment be for a misdemeanor, the trial may be had in the absence of the defendant if he appear by counsel; but if the indictment be for a felony the defendant must be personally present."

Code of Criminal Procedure, sec. 356.

534.

The Court admitted the evidence.

"The plea of not guilty is a denial of every material allegation in the indictment."

Code of Criminal Procedure, sec. 338.

"All matters of fact, tending to establish a defense (other than a plea of former judgment of conviction or acquittal), may be given in evidence under the plea of not guilty."

id., sec. 339.

535.

The Railway Company is liable. It was under no obligation to supply assistance in alighting in the first instance, yet having undertaken to do so it became liable for its negligence in the performance of its voluntary act.

Hanlon v. C. R. R. Co. of N. J., 187
N. Y. 73.

536.

A has not a good cause of action against B.

The action will not lie in the absence of malice or an intent to injure A.

To maintain an action for slander of personal property three things must be established:

First: That the words were false.

Second: That the plaintiff had been injured thereby.

Third: That they were uttered maliciously for the purpose of injuring the plaintiff.

The third element is lacking in the question.

Like v. McKinstry, 41 Barb. 186, 193.

Dodge v. Colby, 37 Hun, 515.

Cornwell v. Parke, 52 Hun, 598, affd.,
123 N. Y. 657.

Hastings v. Giles Lith. Co., 51 Hun, 364,
affd., 121 N. Y. 674.

537.

The railroad company is liable.

A was palpably drunk, and boisterously disorderly, he annoyed the other passengers and refused to be quieted by the conductor. It then became the right and duty of the

railroad company to expel him, and if thereafter, and in the presence of the conductor he wrongfully assaulted another passenger, the railroad company is liable to that passenger for the damages he may have sustained by reason thereof. It is the duty of the railroad company to guard its passengers against the wanton assaults of other passengers, where there is anything in the conduct and appearance of the offender to warrant the conductor in anticipating danger from him.

Putnam v. B'way and Seventh Ave. R. R.
Co., 55 N. Y. 108.

Tyson v. Bauland Co., 186 N. Y. 402.

538.

The business creditors have no right of recourse against the general assets of the estate.

An executor even though explicitly authorized to continue the business cannot bind the general assets of the estate unless authorized to do so. Persons dealing with the executor were bound to know the extent of his authority and that they could resort only to the property embarked in the business at the time of decedent's death.

Manhattan Oil Co. v. Gill, 118 App. Div.
17, 19.

18 Cyc. 244.

539.

The Surrogate refused to probate the will.

The will was not executed and attested as required by statute.

A did not at the time he asked the girls to sign as witnesses, acknowledge the same and declare the instrument so subscribed by him to be his last will and testament, nor did

the testator in the presence of the witnesses, subscribe the will and by his conduct make known to them its nature.

Decedent Estate Law (Laws 1909, chap. 18, sec. 21.)

Bagley v. Blackman, 2 Lansing, 41.

Lane v. Lane, 95 N. Y. 494.

Remsen v. Brincherhoff, 26 Wendell, 325.

Gilbert v. Knox, 52 N. Y. 125.

540.

On proof of the facts, the Surrogate will issue letters of administration with the will annexed.

Code of Civil Procedure, sec. 2643.

541.

A cannot obtain a stay of the execution.

“While equity will sometimes interfere to set aside a judgment obtained by fraud or unfair practices, it will not do so where the only fraud alleged is that the judgment was procured by perjured testimony. Judgments will be set aside only for frauds extrinsic or collateral to matters involved in the trial.”

Gitler v. Russian Co., 124 App. Div. 273.

Mayor v. Brady, 115 N. Y. 599.

542.

C can appear in the action and compel B to insert a clause in the judgment of foreclosure and sale, directing that the estate on which he, C, has no mortgage be first sold.

“Where a claimant has a right to payment out of two funds and another claimant can only look for satisfaction out of one fund, the first claimant shall be satisfied out of the fund in which he alone has a claim and that the second

fund shall not be unnecessarily depleted for that purpose at the expense of the other claimant."

Farmers' Loan & Trust Co. v. Kip, 192 N. Y. 285.

"Where the mortgage in suit covers two tracts or parcels of land, on one of which alone another mortgagee has security, the sale should be so ordered that recourse shall first be had to that parcel not subject to the other mortgage."

27 Cyc., p. 1698.

543.

Execution valid and the corporation liable.

The contract on its face purports to be the contract of the corporation which is named therein as the party thereto and the signature shows that the *general agent* signed it "for" the corporation.

10 Cyc. 1043, 1044, 1049.

544.

Defense invalid.

"A party who has entered into a contract with another, in which the latter assumes to be and contracts as a corporation, is estopped from denying the corporate existence."

U. S. V. Co. v. Schlegel, 143 N. Y. 537.

Card v. Moore, 68 App. Div. 336.

545.

A is not liable on the contract; it is invalid.

The question states that the husband and wife were living together and, while so living, contracted to live separate and apart thereafter and that they separated, predicated on the husband's prior agreement to pay her a weekly allowance sufficient for her support. The law will not enforce a contract like the one in question if made between husband and wife while still living together; such contracts are held void as against public policy, where it is an essential part thereof that the husband and wife should thereafter separate.

Winter v. Winter, 191 N. Y. 462, 470.

546.

Yes.

Marriage, so far as its validity is concerned, is a civil contract. A and B could, therefore, by a written contract of marriage, duly signed, witnessed by at least two witnesses, acknowledged before a judge of a court of record, and recorded within six months after its execution, become married and be husband and wife without having the same solemnized by either clergyman or magistrate (Domestic Relations Law, Laws 1909, chap. 19, sec. 11, subdv. 4), provided they first obtain the necessary marriage license. (Id., sec. 25.)

547.

No. "The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely effecting any interest of the client with respect to which confidence has been reposed."

Canons of Ethics (adopted by N. Y. State Bar Association, Jan. 1909),
Canon 6.

548.

"A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel."

Canons of Ethics (adopted by N. Y. State Bar Association, Jan. 1909), Canon
9.

549.

Invalid. If the governor does not approve a bill, he shall return it with his objections to the house in which it shall have originated. * * * if any bill shall not be returned by the governor within ten days (Sunday excepted) after

the same shall have been presented to him, the same shall be law in like manner as if he had signed it.

N. Y. Const., Art. IV, sec. 9.

Adjournment considerations eliminated from question.

550.

Appointment invalid.

A veteran, when on the civil service list, is entitled to a preference in appointment without regard to his standing on any list from which such appointment may be made, but he has no preference as to examinations to ascertain his merit and fitness, and must get on such list as a result of examinations, before he can be appointed in the civil service.

N. Y. Const., Art. V., sec. 9.

Matter of Keymer, 148 N. Y. 219.

Matter of Stutzbach v. Coler, 168 N. Y.

421.

ANSWERS TO THE CODE QUESTIONS.

551.

(The references are to the Code of Civil Procedure when not otherwise designated.)

"Each of the following Courts of the State is a Court of Record:

1. The Court for the Trial of Impeachments.
2. The Court of Appeals.
3. The Appellate Division of the Supreme Court in each department.
4. The Supreme Court.
5. The Court of Claims.
6. A County Court in each county, except New York.
7. A Surrogate's Court in each county.
8. The Court of General Sessions of the Peace in and for the city and county of New York.
9. The City Court of the city of New York.
10. The City Court of Yonkers.
11. Such other local Courts as are now constituted Courts of Record."

Judiciary Law (L. 1909, ch. 35), sec. 2.

552.

(a) The Supreme Court has general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as may be prescribed by law, not inconsistent with the Constitution.

N. Y. Const. Art. VI, sec. 1.

(b) "§ 217. General jurisdiction of supreme court.

The general jurisdiction in law and equity, which the supreme court of the State possesses, under the provisions of the constitution, includes all the jurisdiction, which was possessed and exercised by the supreme court of the colony of New York, at any time, and by the court of chancery in England, on the 4th day of July, 1776; with the exceptions, additions, and limitations, created and imposed by the constitution and laws of the State. Subject to those exceptions and limitations, the supreme court of the State has all the powers and authority of each of those courts, and exercises the same in like manner."

553.

§ 340. Jurisdiction of county courts.

The jurisdiction of each county court extends to the following actions and special proceedings, in addition to the jurisdiction, power, and authority, conferred upon a county court, in a particular case, by special statutory provision:

1. To an action for the partition of real property; for dower; for the foreclosure, redemption, or satisfaction of a mortgage upon real property; or to procure a judgment requiring a specific performance of a contract, relating to real property; where the real property, to which

the action relates, is situated within the county; or to foreclose a lien upon a chattel, in a case specified in section two hundred and six of the lien law, where the lien does not exceed one thousand dollars in amount, and the chattel is found within the county.

2. To an action in favor of the executor, administrator or assignee of a judgment creditor, or in a proper case, in favor of the judgment creditor, to recover a judgment for money remaining due upon a judgment rendered in the same court.

3. To an action for any other cause, where the defendant is or if there are two or more defendants, where all of them are, at the time of the commencement of the action, residents of the county, and wherein the complaint demands judgment for a sum of money only, not exceeding two thousand dollars; or to recover one or more chattels, the aggregate value of which does not exceed one thousand dollars, with or without damages for the taking or detention thereof.

4. To the custody of the person and the care of the property, concurrently with the supreme court, of a resident of the county, who is incompetent to manage his affairs, by reason of lunacy, idiocy, or habitual drunkenness; or imbecility arising from old age or loss of memory and understanding or other cause; and to every special proceeding, which the supreme court has jurisdiction to entertain, for the appointment of a committee of the person or of the property of such an incompetent person or for the sale or other disposition of the real property situated within the county of a person, wherever resident, who is so incompetent for either of the reasons aforesaid, or who is an infant; or for the sale or other disposition of the real property, situated within the county, of a domestic religious corporation.

554.

§ 241. What judges may perform duties of justices at chambers.

A county judge within his county possesses, and upon proper application must exercise, the power conferred by law in general language upon an officer authorized to perform the duties of a justice of the supreme court at chambers or out of court.

555.

To the county court of the county where the judgment was rendered.
Code Civ. Pro., sec. 3045.

556.

§ 2472. General jurisdiction of surrogate's court.

Each surrogate must hold, within his county, a court, which has, in addition to the powers conferred upon it, or upon the surrogate, by special provision of law, jurisdiction, as follows:

1. To take the proof of wills; to admit wills to probate; to revoke the probate thereof; and to take and revoke probate of heirship.

2. To grant and revoke letters testamentary and letters of administration, and to appoint a successor in place of a person whose letters have been revoked.

3. To direct and control the conduct, and settle the accounts, of executors, administrators, and testamentary trustees; to remove testamentary trustees, and to appoint a successor in place of a testamentary trustee so removed.

4. To enforce the payment of debts and legacies; the distribution of the estates of decedents; and the payment or delivery, by executors, administrators, and testamentary trustees, of money or other property in their possession, belonging to the estate.

5. To direct the disposition of real property, and interests in real property, of decedents, for the payment of their debts and funeral expenses, and the disposition of the proceeds thereof.

6. To administer justice, in all matters relating to the affairs of decedents, according to the provisions of the statutes relating thereto.

7. To appoint and remove guardians for infants; to compel the payment and delivery by them of money or other property belonging to their wards; and, in the cases specially prescribed by law, to direct and control their conduct, and settle their accounts.

8. To settle the accounts of a father, mother or other relative having the rights, powers and duties of a guardian in socage, and to compel the payment and delivery of money or other property belonging to the ward.

This jurisdiction must be exercised in the cases, and in the manner, prescribed by statute.

§ 2472a. The surrogate's court has also jurisdiction upon a judicial accounting or a proceeding for the payment of a legacy to ascertain the title to any legacy or distributive share, to set off a debt against the same and for that purpose ascertain whether the debt exists, to affect the accounting party with a constructive trust, and to exercise all other power, legal or equitable, necessary to the complete disposition of the matter. He must order the trial of any controverted question of fact of which either party has constitutional right of trial by jury and seasonably demands the same.

557.

- (a) Special Terms.
- (b) Trial Terms.
- (c) Appellate Divisions.

558.

A special term of the Supreme Court is held by a single justice without a jury; its general jurisdiction is to hear and decide motions made in actions, to grant orders, to try equity actions and issues of law and to exercise jurisdiction in special actions and proceedings as and when conferred by statute.

559.

A trial term of the Supreme Court is held by one justice only, with a jury, where issues of fact are tried; an issue of law is also triable

at trial term but they are generally brought on and tried at special term as a contested motion.

Code, sec. 976.

560.

The Appellate Division of the Supreme Court is the Court to which all appeals are taken in the first instance from the orders and judgments of the trial and special terms of the Supreme Court, from referees' judgments (Code Civ. Pro., secs. 1346, 1347) and from final judgments rendered by County Courts (Id., sec. 1340). Also, from the Appellate Term of the Supreme Court (Code, sec. 1344), the Court of Claims (Code, sec. 275), and Surrogate's Court (Code, sec. 2570).

Vide Const., Art. VI, sec. 2.

561.

(a) Except where the judgment is of death, the jurisdiction of the Court of Appeals is limited to the review of questions of law.

N. Y. Const., Art. VI, sec. 9.

(b) § 190. The jurisdiction of the court of appeals in civil actions.

The court of appeals has exclusive jurisdiction to review upon appeal every actual determination made prior to the last day of December, eighteen hundred and ninety-five, at a general term of the supreme court, or by either of the superior city courts, as then constituted, in all cases in which, under the provisions of law existing on said day, appeals might be taken to the court of appeals. From and after the last day of December, eighteen hundred and ninety-five, the jurisdiction of the court of appeals shall, in civil actions and proceedings, be confined to the review upon appeal of the actual determinations made by the appellate division of the supreme court in either of the following cases, and no others:

1. Appeals may be taken as of right to said court, from judgments or orders finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance, judgment absolute shall be rendered against them.

2. Appeals may also be taken from determinations of the appellate division of the supreme court in any department where the appellate division allows the same, and certifies that one or more questions of law have arisen which, in its opinion, ought to be reviewed by the court of appeals, in which case the appeal brings up for review the question or questions so certified, and no other; and the court of appeals shall certify to the appellate division its determination upon such questions.

§ 191. Limitations, exceptions and conditions.

The jurisdiction conferred by the last section is subject to the following limitations, exceptions and conditions:

1. No appeal shall be taken to said court, in any civil action or proceeding commenced in any court other than the supreme court, court of claims, county court, or a surrogate's court, unless the appellate division of the supreme court allows the appeal by an order made at the term which rendered the determination, or at the next term after judgment is entered thereupon and shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals.

2. No appeal shall be taken to said court from a judgment of affirmance hereafter rendered in an action to recover damages for a personal injury, or to recover damages for injuries resulting in death, or in an action to set aside a judgment, sale, transfer, conveyance, assignment or written instrument, as in fraud of the rights of creditors, or in an action to recover wages, salary or compensation for services, including expenses incidental thereto, or damages for breach of any contract therefor, or in an action upon an individual bond or individual undertaking on appeal, when the decision of the appellate division of the supreme court is unanimous, unless such appellate division shall certify that in its opinion a question of law is involved which ought to be reviewed by the court of appeals, or unless in case of its refusal to so certify, an appeal is allowed by a judge of the court of appeals.

3. The jurisdiction of the court is limited to a review of questions of law.

4. No unanimous decision of the appellate division of the supreme court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the court of appeals.

562.

A statute of limitations is an act which "accords and limits a reasonable time within which a suit may be brought upon causes of action which it affects." 25 Cyc. 982.

563.

Forty years. (Code, § 362.)

564.

Twenty years. (Code, § 365.)

565.

Twenty years. (Code, § 366.)

566.

§ 381. Within twenty years.

Within twenty years:

An action upon a sealed instrument.

But where the action is brought for breach of a covenant of seizin, or against incumbrances, the cause of action is, for the purposes of this section only, deemed to have accrued upon an eviction, and not before.

567.

§ 382. Within six years.

Within six years:

1. An action upon a contract obligation or liability express or implied; except a judgment or sealed instrument.
2. An action to recover upon a liability created by statute; except a penalty or forfeiture.
3. An action to recover damages for an injury to property, or a personal injury; except in a case where a different period is expressly prescribed in this chapter.
4. An action to recover a chattel.
5. An action to procure a judgment, other than for a sum of money, on the ground of fraud, in a case which, on the thirty-first day of December, 1846, was cognizable by the court of chancery. The cause of action, in such a case, is not deemed to have accrued, until the discovery, by the plaintiff, or the person under whom he claims, of the facts constituting the fraud.
6. An action to establish a will. Where the will has been lost, concealed, or destroyed, the cause of action is not deemed to have accrued, until the discovery, by the plaintiff, or the person under whom he claims, of the facts upon which its validity depends.
7. An action upon a judgment or decree, rendered in a court not of record, except where a transcript shall be filed, pursuant to section thirty hundred and seventeen of this act, and, also, except a decree heretofore rendered in a surrogate's court of the State. The cause of action, in such a case, is deemed to have accrued when final judgment was rendered.

568.

§ 383. Within three years.

Within three years:

1. An action against a sheriff, coroner, constable, or other officer, for the non-payment of money collected upon an execution.
2. An action against a constable, upon any other liability incurred by him, by doing an act in his official capacity, or by the omission of an official duty; except an escape.
3. An action upon a statute, for a penalty or forfeiture, where the action is given to the person aggrieved, or to that person and the people of the State, except where the statute imposing it prescribes a different limitation.
4. An action against an executor, administrator, or receiver, or against the trustee of an insolvent debtor, appointed, as prescribed by law, in a special proceeding instituted in a court or before a judge, brought to recover a chattel, or damages for taking, detaining, or injuring personal property, by the defendant, or the person whom he represents.
5. An action to recover damages for a personal injury, resulting from negligence.

569.

§ 384. Within two years.

Within two years:

1. An action to recover damages for libel, slander, assault, battery, seduction, criminal conversation, false imprisonment, malicious prosecution or malpractice.

2. An action upon a statute, for a forfeiture or penalty to the people of the State.

570.

§ 385. Within one year.

Within one year:

1. An action against a sheriff or coroner, upon a liability incurred by him, by doing an act in his official capacity, or by the omission of an official duty; except the non-payment of money collected upon an execution.

2. An action against any other officer, for the escape of a prisoner, arrested or imprisoned by virtue of a civil mandate.

571.

§ 386. When cause of action accrues on a current account.

In an action brought to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action is deemed to have accrued from the time of the last item, proved in the account on either side.

572.

§ 387. Action for penalty, etc., by any person who will sue.

An action upon a statute for a penalty or forfeiture, given wholly or partly to any person who will prosecute for the same, must be commenced within one year after the commission of the offence; and if the action is not commenced within the year by a private person, it may be commenced within two years thereafter, in behalf of the people of the State, by the attorney-general, or the district-attorney of the county where the offence was committed.

573.

§ 388. Actions not before provided for.

An action, the limitation of which is not specially prescribed in this or the last title, must be commenced within ten years after the cause of action accrues.

574.

§ 395. Acknowledgment or new promise must be in writing.

An acknowledgment or promise contained in a writing, signed by the party to be charged thereby, is the only competent evidence of a new or continuing contract, whereby to take a case out of the operation of this title. But this section does not alter the effect of a payment of principal or interest.

575.

§ 396. Exceptions, as to persons under disabilities.

If a person, entitled to maintain an action specified in this title, except for a penalty or forfeiture, or against a sheriff or other officer for an escape, is, at the time when the cause of action accrues, either:

1. Within the age of twenty-one years; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution upon conviction of a criminal offence, for a term less than for life;

The time of such a disability is not a part of the time limited in this title for commencing the action; except that the time so limited cannot be extended more than five years by any such disability, except infancy; or in any case, more than one year after the disability ceases.

576.

§ 398. When action deemed to be commenced.

An action is commenced against a defendant, within the meaning of any provision of this act, which limits the time for commencing an action, when the summons is served on him; or on a co-defendant who is a joint contractor, or otherwise united in interest with him.

577.

§ 399. Attempt to commence action in a court of record.

An attempt to commence an action, in a court of record, is equivalent to the commencement thereof against each defendant, within the meaning of each provision of this act, which limits the time for commencing an action, when the summons is delivered, with the intent that it shall be actually served, to the sheriff, or, where the sheriff is a party, to a coroner of the county, in which that defendant, or one of two or more co-defendants, who are joint contractors, or otherwise united in interest with him, resides or last resided; or, if the defendant is a corporation, to a like officer of the county, in which it is established by law, or wherein its general business is or was last transacted, or wherein it keeps, or last kept, an office for the transaction of business. But in order to entitle a plaintiff to the benefit of this section, the delivery of the summons to an officer must be followed, within sixty days after the expiration of the time limited for the actual commencement of the action, by personal service thereof upon the defendant sought to be charged, or by the first publication of the summons, as against that defendant, pursuant to an order for service upon him in that manner.

578.

§ 415. Mode of computing periods of limitation.

The periods of limitation, prescribed by this chapter, except as otherwise specially prescribed therein, must be computed from the time of the accruing of the right to relief by action, special proceeding, defence, or otherwise, as the case requires, to the time when the claim to that relief is actually interposed by the party, as a plaintiff or a defendant, in the particular action or special proceeding.

579.

"A civil action is commenced by the service of a summons." (Code, § 416.)

580.

STATE OF NEW YORK — SUPREME COURT, ALBANY COUNTY.

| |
|---|
| JOHN DOE, <i>Plaintiff</i> , <i>against</i> RICHARD ROE, <i>Defendant</i> . |
|---|

To the Above Named Defendant: .

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Trial to be held in the County of Albany.

Dated,, 1910.

X. Y. Z.,

Plaintiff's Attorney.

Office and Post-office Address,

86 State Street, Albany, N. Y.

Code Civ. Pro., § 418.

581.

§ 419. Service of copy complaint or notice with summons; consequence of failure.

A copy of the complaint may be served with the summons. If a copy of the complaint is not served with the summons, the plaintiff cannot take judgment by default without application to the court, unless either the defendant appears, or by a notice is served with the summons, stating the sum of money for which judgment will be taken, and the case is one embraced in the next section.

582.**§ 420. Cases where such service must be made.**

Judgment may be taken without application to the court, where the complaint sets forth one or more causes of action, each consisting of the breach of an express contract to pay, absolutely or upon a contingency, a sum or sums of money, fixed by the terms of the contract, or capable of being ascertained therefrom, by computation only; or an express or implied contract to pay money received or disbursed, or the value of property delivered, or of services rendered by, to, or for the use of, the defendant or a third person; and thereupon demands judgment for a sum of money only. This section includes a case, where the breach of the contract, set forth in the complaint, is only partial; or where the complaint shows that the amount of the plaintiff's demand has been reduced by payment, counterclaim, or other credit.

583.**§ 421. Appearance of defendant.**

The defendant's appearance must be made by serving upon the plaintiff's attorney, within twenty days after service of the summons, exclusive of the day of service, a notice of appearance, or a copy of a demurrer or of an answer. A notice or pleading, so served, must be subscribed by the defendant's attorney, who must add to his signature his office address, with the particulars prescribed in section 417 of this act, concerning the office address of the plaintiff's attorney.

584.**§ 424. Effect of voluntary appearance.**

A voluntary general appearance of the defendant is equivalent to personal service of the summons upon him.

585.**§ 426. How personal service of summons made upon a natural person.**

Personal service of the summons upon a defendant, being a natural person, must be made by delivering a copy thereof, within the State, as follows:

1. If the defendant is an infant, under the age of fourteen years, to the infant in person, and also to his father, mother or guardian; or, if there is none within the State, to the person having the care and control of him, or with whom he resides, or in whose service he is employed.

2. If the defendant is a person judicially declared to be incompetent to manage his affairs, in consequence of lunacy, idiocy, or habitual

drunkenness, and for whom a committee has been appointed, to the committee, and also to the defendant in person.

3. If the action is against a sheriff, for a cause specified in section one hundred and fifty-eight of this act, by delivering it to the defendant in person, or to his under-sheriff in person, or at the office of the sheriff during the hours when it is required by law to be kept open, to a deputy-sheriff or a clerk in the employment of the sheriff, or other person in charge of the office.

4. In any other case, to the defendant in person.

586.

§ 431. How personal service of summons made upon a domestic corporation.

Personal service of the summons upon a defendant, being a domestic corporation, must be made by delivering a copy thereof, within the State, as follows:

1. If the action is against the mayor, aldermen, and commonalty of the city of New York, to the mayor, comptroller, or counsel to the corporation.

2. If the action is against any other city, to the mayor, treasurer, counsel, attorney, or clerk; or, if the city lacks either of those officers, to the officer performing corresponding functions, under another name.

3. In any other case, to the president or other head of the corporation, the secretary or clerk to the corporation, the cashier, the treasurer, or a director or managing agent.

587.

§ 432. *Id.*; upon a foreign corporation.

Personal service of the summons upon a defendant, being a foreign corporation, must be made by delivering a copy thereof, within the state, as follows:

1. To the president, vice-president, treasurer, assistant treasurer, secretary or assistant secretary; or, if the corporation lacks either of those officers, to the officer performing corresponding functions, under another name.

2. To a person designated for the purpose as provided in section sixteen of the general corporation law.

3. If such a designation is not in force, or if neither the person designated, nor an officer specified in subdivision first of this section, can be found with due diligence, and the corporation has property within the state, or the cause of action arose therein; to the cashier, a director, or a managing agent of the corporation, within the state.

4. If the person designated as provided in section sixteen of the general corporation law dies or removes from the place where the corporation has its principal place of business within the state and the corporation does not within thirty days after such death or removal designate in like manner another person upon whom process against

it may be served within the state, process against the corporation in an action upon any liability incurred within this state or if the corporation has property within the state may after such death, removal or revocation and before another designation is made be served upon the secretary of state.

588.

§ 438. Cases in which service of summons by publication, etc., may be ordered.

An order directing the service of a summons upon a defendant, without the State, or by publication, may be made in either of the following cases:

1. Where the defendant to be served is a foreign corporation; or, is an unincorporated association consisting of seven or more persons, having a president and treasurer, neither of whom is a resident of this state; or, being a natural person, is not a resident of the state; or, where, after diligent inquiry, the defendant remains unknown to the plaintiff, or the plaintiff is unable to ascertain whether the defendant is or is not a resident of the state.

2. Where the defendant, being a resident of the state, has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons; or keeps himself concealed therein, with like intent.

3. Where the defendant, being an adult, and a resident of the state, has been continuously without the state of New York more than six months next before the granting of the order, and has not made a designation of a person, upon whom to serve, a summons in his behalf, as prescribed in section four hundred and thirty of this act; or a designation so made no longer remains in force; or service upon the person so designated cannot be made within the state, after diligent effort.

4. Where the complaint demands judgment annulling a marriage, or for a divorce, or a separation.

5. Where the complaint demands judgment, that the defendant be excluded from a vested or contingent interest in or lien upon, specific real or personal property within the state; or that such an interest or lien in favor of either party be enforced, regulated, defined, or limited; or otherwise affecting the title to such property.

6. Where the defendant is a resident of the state or a domestic corporation; and an attempt was made to commence the action against the defendant, as required in chapter fourth of this act, before the expiration of the limitation applicable thereto as fixed in that chapter; and the limitation would have expired, within sixty days next preceding the application, if time had not been extended by the attempt to commence the action.

7. Where the action is against the stockholders of a corporation, or joint-stock company, and is authorized by law of the state, and the defendant is a stockholder thereof. When a copy of the summons is required by subdivision first or subdivision second of section four hundred and twenty-six of this act, or by section four hundred and

twenty-nine of this act, to be delivered to a person other than the defendant, an order, directing the service of a copy of the summons upon such person without the state, or by publication, may be made as prescribed in this section, as if such person was the defendant in the action, and upon a verified complaint and the same proof with respect to such person, as is required in the next succeeding section with respect to a defendant. And sections four hundred and forty to four hundred and forty-four both inclusive, apply to the proceedings in like manner as if such person was a defendant.

589.

§ 446. Who may be joined as plaintiffs.

All persons having an interest in the subject of the action, and in obtaining the judgment demanded, may be joined as plaintiffs, except as otherwise expressly prescribed in this act.

590.

§ 447. *Idem*; as defendants.

Any person may be made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party defendant, for the complete determination or settlement of a question involved therein, except as otherwise expressly prescribed in this act. In any action brought, affecting real estate upon which the people of the state of New York have or claim to have a lien, under the transfer tax act, the said people of the state of New York may be made a party defendant, in the same manner as a private person. In such a case the summons must be served on the attorney-general, who may appear in behalf of the people.

591.

Guardians *ad litem* must be appointed. (Code, §§ 468, 477.)

592.

§ 481. Complaint; what to contain.

The complaint must contain:

1. The title of the action, specifying the name of the court in which it is brought; if it is brought in the supreme court, the name of the county, which the plaintiff designates as the place of trial; and the names of all the parties to the action, plaintiff and defendant.
2. A plain and concise statement of the facts constituting each cause of action without unnecessary repetition.
3. A demand of the judgment to which the plaintiff supposes himself entitled.

593.

§ 484. What causes of action may be joined in the same complaint.

The plaintiff may unite in the same complaint, two or more causes of action, whether they are such as were formerly denominated legal or equitable, or both, where they are brought to recover as follows:

1. Upon contract, express or implied.
2. For personal injuries, except libel, slander, criminal conversation or seduction.
3. For libel or slander.
4. For injuries to real property.
5. Real property, in ejectment, with or without damages for the withholding thereof.
6. For injuries to personal property.
7. Chattels, with or without damages for the taking or detention thereof.
8. Upon claims against a trustee, by virtue of a contract, or by operation of law.
9. Upon claims arising out of the same transaction, or transactions connected with the same subject of action, and not included within one of the foregoing subdivisions of this section.
10. For penalties incurred under the forest, fish and game law.
11. For penalties incurred under the agricultural law.
12. For penalties incurred under the public health law.

But it must appear, upon the face of the complaint, that all the causes of action, so united, belong to one of the foregoing subdivisions of this section; that they are consistent with each other; and, except as otherwise prescribed by law, that they affect all the parties to the action; and it must appear upon the face of the complaint, that they do not require different places of trial.

594.

§ 488. When he may demur.

The defendant may demur to the complaint, where one or more of the following objections thereto appear upon the face thereof:

1. That the court has not jurisdiction of the person of the defendant.
2. That the court has not jurisdiction of the subject of the action.
3. That the plaintiff has not legal capacity to sue.
4. That there is another action pending between the same parties, for the same cause.
5. That there is a misjoinder of parties plaintiff.
6. That there is a defect of parties, plaintiff or defendant.
7. That causes of action have been improperly united.
8. That the complaint does not state facts sufficient to constitute a cause of action.

595.

§ 490. Demurrer to complaint must specify grounds of objection.

The demurrer must distinctly specify the objections to the complaint; otherwise it may be disregarded. An objection, taken under subdivision first, second, fourth, or eighth of section four hundred and eighty-eight of this act, may be stated in the language of the subdivision; an objection, taken under either of the other subdivisions, must point out specifically the particular defect relied upon.

596.

§ 498. When objection may be taken by answer.

Where any of the matters enumerated in section four hundred and eighty-eight of this act as grounds of demurrer, do not appear on the face of the complaint, the objection may be taken by answer.

597.

§ 499. Objection; when deemed waived.

If such an objection is not taken, either by demurrer or answer, the defendant is deemed to have waived it; except the objection to the jurisdiction of the court, or the objection that the complaint does not state facts sufficient to constitute a cause of action.

598.

§ 500. Answer; what to contain.

The answer of the defendant must contain:

1. A general or specific denial of each material allegation of the complaint controverted by the defendant, or of any knowledge or information thereof sufficient to form a belief.
2. A statement of any new matter constituting a defense or counterclaim, in ordinary and concise language without repetition.

599.

§ 501. Counterclaim defined.

The counterclaim, specified in the last section, must tend, in some way, to diminish or defeat the plaintiff's recovery, and must be one of the following causes of action against the plaintiff, or, in a proper case, against the person whom he represents, and in favor of the defendant, or of one or more defendants, between whom and the plaintiff a separate judgment may be had in the action:

1. A cause of action arising out of the contract or transaction, set forth in the complaint as the foundation of the plaintiff's claim, or connected with the subject of the action.
2. In an action on contract, any other cause of action on contract, existing at the commencement of the action.

600.

§ 514. Reply; what to contain.

Where the answer contains a counterclaim, the plaintiff, if he does not demur, may reply to the counterclaim. The reply must contain a general or specific denial of each material allegation of the counterclaim controverted by the plaintiff, or of any knowledge or information thereof sufficient to form a belief; and it may set forth in ordinary and concise language, without repetition, new matter not inconsistent with the complaint, constituting a defense to the counterclaim.

601.

§ 515. Judgment upon failure to reply.

If the plaintiff fails to reply or demur to the counterclaim, the defendant may apply, upon notice, for judgment thereupon; and, if the case requires it, a reference may be ordered, or a writ of inquiry may be issued, as prescribed in chapter eleventh of this act, where the plaintiff applies for judgment.

602.

§ 522. Allegation not denied; when to be deemed true.

Each material allegation of the complaint, not controverted by the answer, and each material allegation of new matter in the answer, not controverted by the reply, where a reply is required, must, for the purposes of the action, be taken as true. But an allegation of new matter in the answer, to which a reply is not required, or of new matter in a reply, is to be deemed controverted by the adverse party, by traverse or avoidance, as the case requires.

603.

§ 523. When pleading must be verified; and when verification may be omitted.

Where a pleading is verified, each subsequent pleading, except a demurrer, or the general answer of an infant by his guardian ad litem, must also be verified. But the verification may be omitted, in a case where it is not otherwise specially prescribed by law, where the party pleading would be privileged from testifying, as a witness, concerning an allegation or denial contained in the pleading. A pleading cannot be used, in a criminal prosecution against the party, as proof of a fact admitted or alleged therein.

604.

§ 525. Verification; how and by whom made.

The verification must be made by the affidavit of the party, or, if there are two or more parties united in interest, and pleading together,

by at least one of them, who is acquainted with the facts, except as follows:

1. Where the party is a domestic corporation, the verification must be made by an officer thereof.

2. Where the people of the State are, or a public officer, in their behalf, is the party, the verification may be made by any person acquainted with the facts.

3. Where the party is a foreign corporation; or where the party is not within the county where the attorney resides, or if the latter is not a resident of the State, the county where he has his office, and capable of making the affidavit; or if there are two or more parties united in interest, and pleading together, where neither of them, acquainted with the facts is within that county, and capable of making the affidavit; or where the action or defence is founded upon a written instrument for the payment of money only, which is in the possession of the agent or the attorney; or where all the material allegations of the pleading are within the personal knowledge of the agent or the attorney; in either case the verification may be made by the agent of or the attorney for the party.

605.

§ 526. Form of affidavit of verification.

The affidavit of verification must be to the effect, that the pleading is true to the knowledge of the deponent, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true. Where it is made by a person, other than the party, he must set forth, in the affidavit, the grounds of his belief, as to all matters not stated upon his knowledge, and the reason why it is not made by the party.

606.

§ 531. Account, how pleaded. Bill of particulars.

It is not necessary for a party to set forth, in a pleading, the items of an account therein alleged; but in that case, he must deliver to the adverse party, within ten days after a written demand thereof, a copy of the account, which, if the pleading is verified, must be verified by his affidavit, to the effect, that he believes it to be true; or, if the facts are within the personal knowledge of the agent or attorney for the party, or the party is not within the county where the attorney resides, or capable of making the affidavit, by the affidavit of the agent or attorney. If he fails so to do, he is precluded from giving evidence of the account. The court, or a judge authorized to make an order in the action, may direct the party to deliver a further account, where the one delivered is defective. Upon application in any case, the court, or a judge authorized to make an order in the action, may, upon notice, direct a bill of the particulars of the claim of either party to be delivered to the adverse party, and in case of default the court

shall preclude him from giving evidence of the part or parts of his affirmative allegation of which particulars have not been delivered.

607.

§ 537. Frivolous pleadings; how disposed of.

If a demurrer, answer or reply is frivolous, the party prejudiced thereby, upon a previous notice to the adverse party, of not less than five days, may apply to the court or to a judge of the court for judgment thereupon, and judgment may be given accordingly. If the application is denied, an appeal cannot be taken from the determination, and the denial of the application does not prejudice any of the subsequent proceedings of either party. Costs, as upon a motion, may be awarded upon an application pursuant to this section.

608.

§ 538. Sham defences to be stricken out.

A sham answer or a sham defence may be stricken out by the court, upon motion, and upon such terms as the court deems just.

609.

§ 542. Amendments of course.

Within twenty days after a pleading, or the answer, demurrer or reply thereto, is served, or at any time before the period for answering it expires, the pleading may be once amended by the party, of course, without costs and without prejudice to the proceedings already had. But if it is made to appear to the court that the pleading was amended for the purpose of delay, and that the adverse party will thereby lose the benefit of a term, for which the cause is or may be noticed, the amended pleading may be stricken out, or the pleading may be restored to its original form, and such terms imposed as the court deems just.

610.

§ 544. Supplemental pleadings.

Upon the application of either party, the court may, and, in a proper case, must, upon such terms as are just, permit him to make a supplemental complaint, answer or reply, alleging material facts which occurred after his former pleading, or of which he was ignorant when it was made; including the judgment or decree of a competent court, rendered after the commencement of the action, determining the matters in controversy, or a part thereof. The party may apply for leave to make a supplemental pleading, either in addition to, or in place of, the former pleading. In the former event, if the application is granted, a provisional remedy, or other proceeding already taken in the action, is not affected by the supplemental pleading; but the right

of the adverse party to have it vacated or set aside, depends upon the cases presented by the original and supplemental pleadings.

611.

§ 545. Motion to strike out irrelevant, etc., matter.

Irrelevant, redundant, or scandalous matter, contained in a pleading, may be stricken out, upon the motion of a person aggrieved thereby. Where scandalous matter is thus stricken out, the attorney whose name is subscribed to the pleading may be directed to pay the costs of the motion, and his failure to pay them may be punished as a contempt of the court.

612.

§ 1279. Controversy, how submitted without process.

The parties to a question in difference, which might be the subject of an action, being of full age, may agree upon a case, containing a statement of the facts, upon which the controversy depends; and may present a written submission thereof to a court of record, which would have jurisdiction of an action, brought for the same cause. The case must be accompanied with the affidavit of one of the parties, to the effect, that the controversy is real; and that the submission is made in good faith, for the purpose of determining the rights of the parties. The submission must be acknowledged or proved, and certified, in like manner as a deed, to be recorded in the county where it is filed.

613.

§ 549. A defendant may be arrested in an action, when the right to arrest depends upon the nature of the action.

A defendant may be arrested in an action, as prescribed in this title, where the action is brought for either of the following causes:

1. To recover a fine or penalty.
2. To recover damages for a personal injury; an injury to property, including the wrongful taking, detention or conversion of personal property; breach of a promise to marry; misconduct or neglect in office, or in a professional employment; fraud; or deceit, or to recover a chattel where it is alleged in the complaint that the chattel or a part thereof has been concealed, removed or disposed of so that it cannot be found or taken by the sheriff and with intent that it should not be so found or taken, or to deprive the plaintiff of the benefit thereof; or to recover for money received, or to recover property or damages for the conversion or misapplication of property where it is alleged in the complaint that the money was received or the property was embezzled or fraudulently misapplied by a public officer or by an attorney, solicitor or counselor, or by an officer or agent of a corporation or banking association in the course of his employment, or by a factor, agent, broker, or other person in a fiduciary capacity. Where such allegation is made, the plaintiff cannot recover unless he proves the

same on the trial of the action; and a judgment for the defendant is not a bar to the new action to recover the money or chattel.

3. To recover money, funds, credits, or property, held or owned by the State, or held, or owned, officially or otherwise, for or in behalf of a public or governmental interest, by a municipal or other public corporation, board, officer, custodian agency, or agent, of the State or of a city, county, town, village, or other division, subdivision, department, or portion of the State, which the defendant has, without right, obtained, received, converted, or disposed of, or to recover damages for so obtaining, receiving, paying, converting, or disposing of the same.

4. In an action upon contract, express or implied, other than a promise to marry, where it is alleged in the complaint that the defendant was guilty of a fraud in contracting or incurring the liability, or that he has since the making of the contract, or in contemplation of making of the same, removed or disposed of his property with intent to defraud his creditors, or is about to remove or dispose of the same with like intent; but where such allegation is made, the plaintiff cannot recover unless he proves the fraud on the trial of the action; and a judgment for the defendant is not a bar to a new action to recover upon the contract only.

§ 550. When the right to arrest depends partly upon extrinsic facts.

A defendant may also be arrested in an action wherein the judgment demanded requires the performance of an act, the neglect or refusal to perform which would be punishable by the court as a contempt, where the defendant is not a resident of the State, or, being a resident, is about to depart therefrom, by reason of which non-residence or departure there is danger that a judgment or an order requiring the performance of the act will be rendered ineffectual.

614.

§ 553. A woman cannot be arrested, as prescribed in this title, except in a case where the order can be granted only by the court; or where it appears, that the action is to recover damages for a wilful injury to person, character, or property.

615.

§ 603. Injunction, when the right thereto depends upon the nature of the action.

Where it appears, from the complaint, that the plaintiff demands and is entitled to a judgment against the defendant, restraining the commission or continuance of an act, the commission or continuance of which, during the pendency of the action, would produce injury to the plaintiff, an injunction order may be granted to restrain it. The case, provided for in this section, is described in this act, as a case, where the right to an injunction depends upon the nature of the action.

§ 604. *Id.*; when the right thereto depends upon extrinsic facts.

In either of the following cases, an injunction order may also be granted in an action:

1. Where it appears, by affidavit, that the defendant, during the pendency of the action, is doing, or procuring, or suffering to be done, or threatens, or is about to do, or to procure, or suffer to be done, an act, in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual, an injunction order may be granted to restrain him therefrom.

2. Where it appears, by affidavit, that the defendant, during the pendency of the action, threatens, or is about to remove, or to dispose of his property, with intent to defraud the plaintiff, an injunction order may be granted, to restrain the removal or disposition.

616.

§ 605. Restrictions upon injunction to restrain State officers.

Where a duty is imposed by statute upon a State officer, or board of State officers, an injunction order to restrain him or them, or a person employed by him or them, from the performance of that duty, or to prevent the execution of the statute, shall not be granted, except by the supreme court, at a term thereof, sitting in the department in which the officer or board is located, or the duty is required to be performed; and upon notice of the application therefor to the officer, board, or other person to be restrained.

617.

§ 635. Warrant of attachment; in what actions.

A warrant of attachment against the property of one or more defendants in an action, may be granted upon the application of the plaintiff, as specified in the next section, where the action is to recover a sum of money only, as damages for one or more of the following causes:

1. Breach of contract, express or implied, other than a contract to marry.

2. Wrongful conversion of personal property.

3. An injury to person or property, in consequence of negligence, fraud or other wrongful act.

618.

§ 636. What must be shown to procure the warrant.

To entitle the plaintiff to such a warrant, he must show, by affidavit, to the satisfaction of the judge granting the same, as follows:

1. That one of the causes of action specified in the last section exists against the defendant. If the action is to recover damages for breach of contract, the affidavit must show that the plaintiff is entitled to recover a sum stated therein, over and above all counter-claims known to him.

2. That the defendant is either a foreign corporation or not a resident of the state; or, if he is a natural person and a resident of the state, that he has departed therefrom, with intent to defraud his creditors, or to avoid the service of a summons, or keeps himself concealed therein with the like intent; or, if the defendant is a natural person or a domestic corporation, that he or it has removed, or is about to remove, property from the state, with intent to defraud his or its creditors; or has assigned, disposed of, or secreted, or is about to assign, dispose of or secrete property with the like intent; or where, for the purpose of procuring credit, or the extension of credit, the defendant has made a false statement in writing, under his own hand or signature, or under the hand or signature of a duly authorized agent, made with his knowledge and acquiescence as to his financial responsibility or standing; or, where the defendant, being an adult and a resident of the state, has been continuously without the state of New York for more than six months next before the granting of the order of publication of the summons against him, and has not made a designation of a person upon whom to serve a summons in his behalf, as prescribed in section four hundred and thirty of this act; or a designation so made no longer remains in force, or service upon the person so designated cannot be made within the state, after diligent effort.

619.

§ 637. Warrant in action against public officer, etc., for peculation.

A warrant of attachment, against the property of one or more defendants in an action, may also be granted, upon the application of the plaintiff, where the complaint demands judgment for a sum of money only; and it appears, by affidavit, that the action is brought to recover money, funds, credits, or other property, held or owned by the State, or held or owned, officially or otherwise, for or in behalf of a public governmental interest, by a municipal or other public corporation, board, officer, custodian, agency, or agent, of the State, or of a city, county, town, village, or other division, subdivision, department, or portion of the State, which the defendant has, without right, obtained, received, converted, or disposed of; or in the obtaining, reception, payment, conversion, or disposition of which, without right, he has aided or abetted; or to recover damages for so obtaining, receiving, paying, converting, or disposing of the same; or the aiding or abetting thereof; or in an action in favor of a private person or corporation, brought to recover damages for an injury to personal property where the liability arose, in whole or in part, in consequence

of the false statements of the defendant as to his responsibility or credit, in writing, under the hand or signature of the defendant or his authorized agent, made with his knowledge and acquiescence. In order to entitle the plaintiff to a warrant of attachment, in the case specified in this section, he must show, by affidavit, to the satisfaction of the judge granting it, that a sufficient cause of action exists against the defendant for a sum stated in the affidavit.

620.

§ 713. Receiver; when appointed.

In addition to the cases, where the appointment of a receiver is specially provided for by law, a receiver of property, which is the subject of an action, in the supreme court or a county court, may be appointed by the court, in either of the following cases:

1. Before final judgment, on the application of a party who establishes an apparent right to, or interest in, the property, where it is in the possession of an adverse party, and there is danger that it will be removed beyond the jurisdiction of the court, or lost, materially injured, or destroyed.

2. By or after the final judgment, to carry the judgment into effect, or to dispose of the property, according to its directions.

3. After final judgment, to preserve the property, during the pendency of an appeal.

The word, "property," as used in this section, includes the rents, profits, or other income, and the increase, of real or personal property.

621.

§ 731. Tender after suit.

Where the complaint demands judgment for a sum of money only; and the action is brought to recover a sum certain, or which may be reduced to certainty by calculation; or to recover damages for a casual or involuntary personal injury, or a like injury to property; the defendant, or his attorney, may, at any time before the trial, tender to the plaintiff, or his attorney, such a sum of money, as he conceives to be sufficient to make amends for the injury, or to pay the plaintiff's demand; together with the costs of the action, to that time.

622.

§ 755. Action; when not to abate.

An action does not abate by any event, if the cause of action survives or continues. A special proceeding does not abate by any event, if the right to the relief sought in such special proceeding survives or continues, but this provision as to special proceeding applies only to cases where a party dies after this act takes effect.

623.

§ 767. Definition of an order.

A direction of a court or judge, made, as prescribed in this act, in an action or special proceeding, must be in writing, unless otherwise specified in the particular case. Such a direction, unless it is contained in a judgment, is an order.

624.

§ 768. Id.; of a motion.

An application for an order is a motion. Such application or motion must be made to a court, or to a judge or justice thereof. When the defendants have made default in appearing in an action or proceeding, any application or motion therein may be made to the court or to a judge or justice thereof out of court. Where any of the defendants in an action or proceedings have appeared, all motions or applications thereafter made in such action or proceedings, must be made to the court, unless such defendants consent to the making of such motion or application to a judge or justice out of court.

625.

§ 780. Notice of motion, to be eight days.

Where special provision is not otherwise made by law, or by the general rules of practice, if notice of a motion, or of any other proceeding in an action, before a court or a judge, is necessary, it must, if personally served, be served at least eight days before the time appointed for the hearing; unless the court or a judge thereof, or a county judge of the county where the action is triable or in which the attorney for the applicant resides, upon an affidavit showing grounds therefor, makes an order to show cause why the application should not be granted; and, in the order, directs that service thereof, less than eight days before it is returnable, be sufficient.

626.

Five days.

Rule 37. General Rules of Practice.

627.

§ 820. Interpleader by order in certain cases.

A defendant against whom an action to recover upon a contract, or an action of ejectment, or an action to recover a chattel, is pending, may, at any time before answer, upon proof, by affidavit, that a person, not a party to the action, makes a demand against him for the same debt or property, without collusion with him, apply to the court, upon notice to that person and the adverse party, for an order to substitute that person in his place, and to discharge him from liability to either, on his paying into court the amount of the debt, or delivering

the possession of the property, or its value, to such person as the court directs; or upon it appearing that the defendant disputes, in whole or in part, the liability as asserted against him by different claimants, or that he has some interest in the subject-matter of the controversy which he desires to assert, his application may be for an order joining the other claimant or claimants as co-defendants with him in the action. The court may, in its discretion, make such order, upon such terms as to costs and payments into court of the amount of the debt, or part thereof, or delivery of the possession of the property, or its value or part thereof, as may be just, and thereupon the entire controversy may be determined in the action.

§ 820-a. Suit by debtor, demanding judgment of interpleader.

When any sum of money shall be due and payable under or on account of a contract, and the whole, or any part thereof, exceeding fifty dollars in amount, shall be claimed or demanded by adverse claimants thereto, the debtor may bring suit in any court having jurisdiction thereof, and of the parties, demanding judgment of interpleader, and that the debtor be permitted to pay the amount of the debt into court, and that such debtor upon such payment into court be discharged from any further liability to any of the parties to the action. When service of the summons and complaint shall have been made upon all such claimants, the plaintiff may make application, by petition or upon affidavits for an order permitting and directing the plaintiff to pay the amount of the debt into court, and that the plaintiff, upon the payment into court of the amount of the debt as required by the order, be discharged from any further liability to any of the defendants in such action, and the court, upon satisfactory proof by affidavit or otherwise, as the court may require, of the facts alleged in the complaint, and that the whole or part of the debt is claimed adversely by the defendants without any collusion on the part of the plaintiff, and that the amount thereof is not in dispute may make such an order, upon such terms as to costs and disbursements payable out of the money so adversely claimed as to the court may seem just, and upon the payment into court of the amount of such debt, and complying with the terms of such order, the plaintiff shall stand discharged from any further liability to any of the defendants in said action upon account of such debt and contract. Notice of such application, together with copies of the papers upon which the same is made, shall be personally served on each of the defendants, at least five, and not more than fifteen days before the return day thereof.

629.

§ 933. Issues defined; different kinds of issues.

The issues, treated of in this chapter, are those only which are presented by the pleadings. An issue arises where a fact, or a con-

clusion of law, is maintained by one party, and controverted by the other. Issues are of two kinds:

1. Of law; and
2. Of fact.

629.

§ 964. When issues of law arise; when issues of fact arise.

An issue of law arises only upon a demurer. An issue of fact arises, in either of the following cases:

1. Upon a denial, contained in the answer, of a material allegation of the complaint; or upon an allegation, contained in the answer, that the defendant has not sufficient knowledge or information to form a belief, with respect to a material allegation of the complaint.
2. Upon a similar denial or allegation, contained in the reply, with respect to a material allegation of the answer.
3. Upon a material allegation of new matter, contained in the answer, not requiring a reply; unless an issue of law is joined thereupon.
4. Upon a material allegation of new matter, contained in the reply; unless an issue of law is joined thereupon.

630.

§ 987. When court may change the place of trial.

The court may, by order, change the place of trial, in either of the following cases:

1. Where the county, designated for that purpose in the complaint, is not the proper county.
2. Where there is reason to believe, that an impartial trial cannot be had in the proper county.
3. Where the convenience of witnesses, and the ends of justice, will be promoted by the change.

631.

§ 977. Notice of trial and note of issue; calendar to be prepared.

At any time after the joinder of issue, and at least fourteen days before the commencement of the term, either party may serve a notice of trial. The party serving the notice must file with the clerk a note of issue, stating the title of the action, the names of the attorneys, the time when the last pleading was served, the nature of the issue, whether of fact or of law; and, if an issue of fact, whether it is triable by jury, or by the court, without a jury, and the particular nature of the same and the object of the action. The note of issue must be filed at least twelve days before the commencement of the term. The clerk must thereupon enter the cause upon the calendar

according to the date of issue. The clerk must prepare the calendar and have the necessary copies ready for distribution at least five days before the commencement of the term. In the counties of New York, Kings, Queens, Richmond, Albany, Erie, Monroe, Onondaga, Schenectady and Westchester, where a party has served a notice of trial, and filed a note of issue, for a term at which the case is not tried, it is not necessary for him to serve a new notice of trial, or file a new note of issue, for a succeeding term; and the action must remain on the calendar until it is disposed of.

632.

§ 1176. Peremptory challenges in a civil action.

Upon the trial of an issue of fact, joined in a civil action in a court of record, each party may peremptorily challenge not more than six and in a court not of record each party may peremptorily challenge not more than three of the persons drawn as jurors for the trial.

633.

§ 1008. If trial by jury waived, action must be tried by the court.

In an action triable by a jury, if the parties waive the trial, by a jury, of the issue of fact, the action must be tried by the court, without a jury; unless a reference is directed, in a case prescribed by law. (1) But such an action, other than to recover damages for breach of a contract, cannot be tried by the court, without a jury, unless the judge, presiding at the term where it is brought on for trial, assents to such a trial. (2) His refusal so to assent annuls a waiver, made as prescribed in subdivision second, third, or fourth of the next section.

634.

§ 999. Motion for new trial upon judge's minutes; appeal from order thereupon.

The judge, presiding at a trial by a jury, may, in his discretion, entertain a motion, made upon his minutes, at the same term, to set aside the verdict or a direction dismissing the complaint and grant a new trial upon exceptions; or because the verdict is for excessive or insufficient damages, or otherwise contrary to the evidence, or contrary to law. If an appeal is taken from the order, made upon the motion, it must be heard upon a case prepared and settled in the usual manner.

635.

§ 1212. Judgment by default in certain actions on contract; how taken.

In an action specified in section four hundred and twenty of this act, where the summons was personally served upon the defendant, and the copy of the complaint, or a notice stating the sum of money for which judgment will be taken, was served with the summons, or where the defendant has appeared, but has made default in pleading, the plaintiff may take judgment by default, as follows:

1. If the defendant has made default in appearing, the plaintiff must file proof of the service of the summons, and of a copy of the complaint or the notice; and also proof, by affidavit, that the defendant has not appeared. Whereupon the clerk must enter final judgment in his favor.

2. If the defendant had seasonably appeared, but has made default in pleading, the plaintiff must file proof of the service of the summons and of the appearance or of the appearance only; and also proof, by affidavit, of the default. Whereupon, the clerk must enter final judgment in his favor.

If the defendant has made default in appearing or pleading, and the case is not one where the clerk can enter final judgment, as prescribed in either of the foregoing subdivisions of this section, the plaintiff must apply to the court for judgment, as prescribed in section 1214 of this act.

§ 1213. Amount of judgment in such cases; how determined.

Where final judgment may be entered by the clerk, as prescribed in the last section, the amount thereof must be determined as follows:

1. If the complaint is verified, the judgment must be entered for the sum, for which the complaint demands judgment; or, at the plaintiff's option, for a smaller sum; and if a computation of interest is necessary, it may be made by the clerk.

2. If the complaint is not verified, the clerk must assess the amount due to the plaintiff, by computing the sum due upon an instrument for the payment of money only, the non-payment of which constitutes a cause of action, stated in the complaint; and by ascertaining, by the examination of the plaintiff, upon oath, or by other competent proof, the amount due to him for any other cause of action stated in the complaint. If an instrument, specified in this subdivision, has been lost, so that it cannot be produced to the clerk, he must take proof of its loss and of its contents. Either party may require the clerk to reduce to writing and file the assessment, and the oral proof, if any, taken thereupon.

636.

§ 1214. Application to court for judgment by default; when necessary.

Where the summons was personally served upon the defendant, within the State, and he has made default in appearing, or where the defendant has appeared, but has made default in pleading; and the

case is not one where the clerk can enter final judgment, as prescribed in the last two sections, the plaintiff may apply to the court, or to a judge or justice thereof out of court, for judgment. Upon the application he must file, if the default was in appearing, proof of service of the summons; or, if the default was in pleading, proof of appearance, and also, if a copy of the complaint was demanded, proof of service thereof, upon the defendant's attorney; and in either case, proof by affidavit, of the default which entitles him to judgment. If one or more of the defendants have appeared, and one or more defendants have failed to appear, then the application for judgment must be made to the court, unless the defendants who have appeared consent to the making of such application to a judge or justice out of court.

637.

§ 1273. Judgment may be confessed.

A judgment by confession may be entered, without action, either for money due or to become due, or to secure a person against contingent liability in behalf of the defendant, or both, as prescribed in this article.

§ 1274. Statement; form thereof.

A written statement must be made, and signed by the defendant, to the following effect:

1. It must state the sum, for which judgment may be entered, and authorize the entry of judgment therefor.

2. If the judgment to be confessed is for money due or to become due, it must state concisely the facts, out of which the debt arose; and must show, that the sum confessed therefor is justly due, or to become due.

3. If the judgment to be confessed is for the purpose of securing the plaintiff, against a contingent liability, it must state concisely the facts, constituting the liability; and must show, that the sum confessed therefor does not exceed the amount of the liability.

The statement must be verified by the oath of the defendant, to the effect, that the matters of fact therein set forth are true.

638.

§ 1932. Judgment against defendants jointly indebted, when all are not served.

In an action, wherein the complaint demands judgment for a sum of money against two or more defendants, alleged to be jointly indebted upon contract, if the summons is served upon one or more, but not upon all of the defendants, the plaintiff may proceed against the defendant or defendants, upon whom it is served, unless the court otherwise directs; and, if he recovers final judgment, it may be taken against all the defendants thus jointly indebted.

§ 1933. Effect of such judgment.

Such a judgment is conclusive evidence of the liability of each defendant, upon whom the summons was personally served, or who appeared in the action. Where it is taken against a defendant, upon whom the summons was served by publication, or without the State, pursuant to an order for that purpose, it has the effect as against that defendant, specified in section 445 of this act. As against such a defendant, who is allowed to defend after judgment, or as against a defendant not summoned, it is evidence only of the extent of the plaintiff's demand, after the liability of that defendant has been established, by other evidence.

639.

§ 1240. When a judgment may be enforced by execution.

In either of the following cases, a final judgment may be enforced by execution:

1. Where it is for a sum of money, in favor of either party; or directs the payment of a sum of money.
2. Where it is in favor of the plaintiff, in an action of ejectment, or for dower.
3. In an action to recover a chattel, where it awards a chattel to either party.

640.

§ 1364. The different kinds of execution.

There are four kinds of execution, as follows:

1. Against property.
2. Against the person.
3. For the delivery of the possession of real property with or without damages for withholding the same.
4. For the delivery of the possession of a chattel, with or without damages for the taking or detention thereof.

An execution is the process of the court, from which it is issued.

641.

§ 1325. Limitation of time to appeal.

An appeal to the court of appeals, must be taken within sixty days after service, upon the attorney for the appellant, of a copy of the judgment or order appealed from, and a written notice of the entry thereof.

642.

§ 1326. Security to perfect appeal.

To render a notice of appeal, to the court of appeals, effectual, for any purpose, except in a case where it is specially prescribed by law, that security is not necessary, to perfect the appeal, the appellant

must give a written undertaking, to the effect, that he will pay all costs and damages, which may be awarded against him on the appeal, not exceeding five hundred dollars. The appeal is perfected, when such an undertaking is given and a copy thereof, with notice of the filing thereof, is served, as prescribed in this title.

643.

Within thirty days after service upon the attorney for the appellant of a copy of the judgment or order appealed from and a written notice of the entry thereof.

Code, sec. 1351.

644.

§ 1351. * * * * * Security is not required to perfect the appeal; but, except where it is otherwise specially prescribed by law, the appeal does not stay the execution of the judgment or order appealed from; unless the court, in or from which the appeal is taken, or a judge thereof, makes an order, directing such a stay. Such an order may be made, and may, from time to time, be modified, upon such terms, as to security or otherwise, as justice requires. If security is given, either as a condition of granting the order, or as prescribed in the next section, the provisions of title second of this chapter apply thereto, as if the appellate division of the supreme court was specified in those provisions, in place of the appellate court, and a judge of the same court, in place of a judge of the court below. Execution of a judgment for the recovery of money only shall not be stayed without security for more than thirty days after the service upon the attorney for the appellant of a copy of the judgment and written notice of the entry thereof.

645.

§ 1695. Affidavit in replevin, before commencement of action.

The affidavit, to be delivered to the sheriff, as prescribed in the last section, must particularly describe the chattel to be replevied; and must contain the following allegations:

1. That the plaintiff is the owner of the chattel, or is entitled to the possession thereof, by virtue of a special property therein; the facts with respect to which must be set forth.

2. That it is wrongfully detained by the defendant.

3. The alleged cause of the detention thereof, according to the best knowledge, information, and belief of the person making the affidavit.

4. That it has not been taken by virtue of a warrant, against the plaintiff, for the collection of a tax, assessment, or fine, issued in pursuance of a statute of the State, or of the United States; or, if it has been taken under color of such a warrant, either that the taking

was unlawful, by reason of defects in the process, or other causes specified, or that the detention is unlawful, by reason of facts specified, which have subsequently occurred.

5. That it has not been seized by virtue of an execution or warrant of attachment, against the property of the plaintiff, or of any person from or through whom the plaintiff has derived title to the chattel, since the seizure thereof; or, if it has been so seized, that it was exempt from the seizure, by reason of facts specified, or that its detention is unlawful, by reason of facts specified which have subsequently occurred.

6. Its actual value.

646.

§ 1991. State writs enumerated.

The writ of habeas corpus to bring up a person to testify, or to answer; the writ of habeas corpus, and the writ of certiorari, to inquire into the cause of detention; the writ of mandamus; the writ of prohibition; the writ of assessment of damages, which is substituted for the writ heretofore known as the writ of *ad quod damnum*; and the writ of certiorari to review the determination of an inferior tribunal, which may be called the writ of review, shall hereafter be styled, collectively, State writs.

647.

§ 2015. Who entitled to prosecute the writs. Habeas corpus may issue on Sunday.

A person imprisoned or restrained in his liberty, within the State, for any cause, or upon any pretense, is entitled, except in one of the cases specified in the next section, to a writ of habeas corpus, or a writ of certiorari, as prescribed in this article, for the purpose of inquiring into the cause of the imprisonment or restraint, and, in a case prescribed by law, of delivering him therefrom. A writ of habeas corpus may be issued and served under this section, on the first day of the week, commonly called Sunday; but it cannot be made returnable on that day.

648.

Mandamus is a writ issued to compel official or judicial action. 26 Cyc. 139-142.

§ 2067. Kinds of writ; how alternative writ granted.

A writ of mandamus is either alternative or peremptory. The alternative writ may be granted upon an affidavit, or other written proof, showing a proper case therefor; and either with or without previous notice of the application, as the court thinks proper.

649.

A writ of prohibition is an extraordinary judicial writ issuing out of a court of superior jurisdiction and directed to an inferior tribunal,

commanding it to cease abusing or usurping judicial functions. 32 Cyc. 599.

§ 2091. Kinds of writ; how granted.

A writ of prohibition is either alternative or absolute. The alternative writ may be granted upon an affidavit, or other written proof, showing a proper case therefor, and either with or without previous notice of the application, as the court thinks proper.

§ 2094. Alternative writ must issue first; its contents.

Except as otherwise specially prescribed by law, an absolute writ of prohibition cannot be issued, until an alternative writ has been issued and duly served, and the return day thereof has elapsed. The alternative writ must be directed to the court in which, or to the judge before whom, and also to the party in whose favor, the proceedings to be restrained were taken, or are about to be taken. It must command the court or judge, and also the party, to desist and refrain from any further proceedings in the action or special proceeding, or with respect to the particular matter or thing described therein, as the case may be, until the further direction of the court issuing the writ; and also to show cause, at the time when, and the place where, the writ is made returnable, why they should not be absolutely restrained from any further proceedings in that action, special proceeding, or matter. The writ need not contain any statement of the facts or legal objections, upon which the relator founds his claim to relief.

650.

A writ of certiorari is a writ issued to review the determination of an inferior tribunal. (Code, sec. 1992.) It is issued from a superior court directed to one of inferior jurisdiction commanding the latter to certify and return to the former the record in the particular case. (6 Cyc. 737.)

§ 2120. Cases where writ may issue.

The writ of certiorari regulated in this article, except the writ specified in section 2124 of this act, is issued to review the determination of a body or officer. It can be issued in one of the following cases only:

1. Where the right to the writ is expressly conferred, or the issue thereof is expressly authorized, by a statute.
2. Where the writ may be issued at common law, by a court of general jurisdiction, and the right to the writ, or the power of the court to issue it, is not expressly taken away by a statute.

§ 2121. Cases where it cannot issue.

A writ of certiorari cannot be issued, to review a determination, made, after this article takes effect, in a civil action or special proceeding, by a court of record, or a judge of a court of record.

§ 2122. The same.

Except as otherwise expressly prescribed by a statute, a writ of certiorari cannot be issued, in either of the following cases:

1. To review a determination, which does not finally determine the rights of the parties, with respect to the matter to be reviewed.

2. Where the determination can be adequately reviewed, by an appeal to a court, or to some other body or officer.

3. Where the body or officer, making the determination, is expressly authorized, by statute, to rehear the matter, upon the relator's application; unless the determination to be reviewed was made upon a rehearing, or the time within which the relator can procure a rehearing has elapsed. *Vide*, 199 N. Y. 150; *id.* p. 382.

PRACTICE ON ADMISSION.

AFTER EXAMINATION.

Practice on admission after examination and certification by the State Board of Law Examiners is regulated by Rule III of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at Law, as amended May 17, 1911, to take effect July 1, 1911, and by Rule I of the General Rules of Practice.

Rule III of the Rules of the Court of Appeals reads as follows:

RULE III.

ADMISSION ON EXAMINATION.

Three classes of persons may be admitted to the Bar upon examination:

1. Persons who are not graduates of a college or university;
2. Persons who are graduates of a college or university; and
3. Persons who have been admitted as attorneys and have practiced three years in another state or country.

In each class the applicant must prove by his own affidavit to the satisfaction of the State Board of Law Examiners that he is a citizen of the United States, twenty-one years of age, stating his age, and an actual and not a constructive resident of the State for not less than six months immediately preceding and that he has not been examined for admission to practice and been refused admission within four months, and that he has studied law in the manner and according to the conditions in these rules prescribed.

Applicants in the first class (*i. e.*, persons who are not graduates of a college or university) must have studied law for a period of four years. Such an applicant may pursue his course of law study wholly by serving a clerkship in the office of a practicing attorney; or partly by serving such clerkship and partly by attending a law school; but every such

applicant must serve such clerkship for a period of at least one year continuously either before examination by the State Board of Law Examiners or after such examination and prior to admission to the Bar.

Applicants in the second class (*i. e.*, persons who are graduates of a college or university) must have studied law for a period of three years. Such an applicant may pursue his course of law study wholly by serving a clerkship in the office of a practicing attorney; or wholly by attending a law school; or partly by serving such clerkship and partly by attending a law school.

Applicants in the third class (*i. e.*, persons who have been admitted as attorneys and have practiced three years in another state or country) must have studied law for a period of one year within this State and pursue such course of study either by serving a clerkship or by attendance upon a law school as the applicant may elect.

Candidates for admission to the Bar under this rule (*i. e.*, upon examination) may be admitted and licensed upon producing and filing with the court the certificate of the State Board of Law Examiners that the applicant has satisfactorily passed the examination prescribed by these rules and has complied with their provisions, and upon producing and filing with the court, in the case of applicants in the first class (*i. e.*, persons who are not graduates of a college or university), evidence that he has served a regular clerkship of one year in this State with an attorney or attorneys in regular practice, either before or after having passed such examination. The applicant must also produce and file evidence that he is a person of good moral character which must be shown by the affidavits of two reputable persons of the town or city in which he resides, one of whom must be a practicing attorney of the Supreme Court. Such affidavits must state that the applicant is, to the knowledge of the affiant, a person of good moral character, and must set forth in detail the facts upon which such knowledge is based; but such affidavits shall not be conclusive and the court may make further examination and inquiry.

If the applicant be a graduate of a college, or university, he must have pursued the prescribed course of law study after

his graduation, and, if he be a person admitted to the bar of another state or country, he must have pursued his prescribed period of law study after having remained as a practicing attorney in such other state or country for the period of three years.

Rule I of the General Rules of Practice reads as follows :

“ RULE I.— *Application for Admission as Attorneys.*

Within ten days after the first day of January in each year, the Appellate Division in each department shall appoint a committee on character and fitness of not less than three for the department or may appoint a committee for each judicial district within the department, to whom shall be referred all applications for admission to practice as attorney and counselor at law, such committee to continue in office until their successors are appointed. To the respective committees shall be referred all applications for admission to practice, either upon the certificate of the State Board of Law Examiners or upon motion under Rule II of the Rules of the Court of Appeals for the admission of attorneys and counselors at law. The committee shall require the attendance before it or a member thereof of each applicant, with the affidavit of at least two practicing attorneys acquainted with such applicant, residing in the judicial district in which the applicant resides, that he is of such character and general fitness as justifies admission to practice, and the affidavit must set forth in detail the facts upon which the affiant's knowledge of the applicant is based, and it shall be the duty of the committee to examine each applicant and the committee must be satisfied from such examination and other evidence that the applicant shall produce that the applicant has such qualifications as to character and general fitness as in the opinion of the committee justify his admission to practice, and no person shall be admitted to practice except upon the production of a certificate from the committee to that effect, unless the Court otherwise orders.

No applicant shall be entitled to receive such a certificate who is not able to speak and to write the English language intelligently, nor until he affirmatively establishes to the

satisfaction of the committee that he possesses such a character as justifies his admission to the Bar and qualifies him to perform the duties of an attorney and counselor at law.

An applicant for admission to practice as an attorney and counselor at law on motion, under the provisions of Rule II of the Rules of the Court of Appeals for the Admission of Attorneys and Counselors at law, must present to the Court proof that he has been admitted to practice as an attorney and counselor at law in the highest Court of law in another State or in a country whose jurisprudence is based upon the principles of the common law of England; a certificate, executed by the proper authorities, that he has been duly admitted to practice in such State or country; that he has actually remained in said State or country and practiced in such Court as attorney and counselor at law for at least three years; a certificate from a judge of such Court that he has been duly admitted to practice and has actually continuously practiced as an attorney and counselor at law for a period of at least three years after he has been admitted, specifying the name of the place or places in which he has so practiced and that he has a good character as such attorney. Such certificate must be duly certified by the clerk of the Court of which the judge is a member and the seal of the Court must be attached thereto. He must also prove that he is a citizen of the United States and has been an actual resident of the State of New York or of an adjoining State for at least six months prior to the making of the application, giving the place of his residence by street and number, if such there be, and the length of time he has been such resident. He shall also submit the affidavits of two persons who are residents of the judicial district in which he resides, one of whom must be an attorney and counselor at law, that he is of such character and general fitness as justifies admission to practice, and the affidavit must set forth in detail the facts upon which the affiant's knowledge of the applicant is based. In all cases the applicant must appear in person before the Court on the motion for his admission and also before the committee on character and fitness for the district in which the application is made. When the applicant resides in an ad-

joining State and a motion is made to admit him to practice in this State without actual residence herein, in addition to the foregoing facts, the applicant must prove to the satisfaction of the Court that he has opened and maintains an office in this State for the transaction of law business therein.

In all cases the applicant for admission must file with the clerk of the Appellate Division of the proper department the papers required for his admission as hereinbefore specified prior to or at the time of the motion for admission to practice."

Each applicant who has been examined is notified of the result by the Secretary of the State Board of Law Examiners in about from two to three weeks after the examination has been held, by written notice directed to him at his home address as the same is sworn to in his application papers.

That notice may be (1) that he has failed generally, or (2) that he has failed in Group One, Pleading and Practice and Evidence or (3) that he has failed in Group Two, Substantive Law, or (4) that he has been successful.

An applicant who fails generally or in either group is entitled to a re-examination provided he notifies the Secretary of the Board by mail of his desire therefor, at least fifteen days before the examination at which he intends to appear and files with him, at the same time, his own affidavit stating that he is and has been for the six months prior to such examination, an actual and not constructive resident of this State, giving the place of such residence and street and number, if any. (Rule I, Rules of the State Board of Law Examiners.) An applicant who has failed to pass one examination cannot again be examined, until at least four months after such failure. (Rule VIII, Rules, Court of Appeals.) On payment of one examination fee, the applicant shall be entitled to the privilege of not exceeding three examinations. (Judiciary Law, Laws 1909, chap. 35, sec. 465.)

The applicant who receives notice that he failed in one of the groups will receive a pass card for the other group, and will not be re-examined in the latter group; he will be certified for admission whenever he passes, on a re-examination, in the group in which he has failed.

To the applicant who has been successful, a certificate signed by the members of the State Board of Law Examiners is mailed, certifying his name to the Appellate Division in which he has resided for the six months immediately preceding his examination as the same appears in his application papers. The certificate is to the effect that the applicant has satisfactorily passed the examination prescribed by the Rules of the Court of Appeals, regulating admission to the Bar in this State, and has complied with their provisions.

The applicant is required to appear in person before the Committee on Character and Fitness or a member thereof, and to file with the Clerk of the Appellate Division to which he is certified, none other has jurisdiction, the above certificate of the State Board of Law Examiners and the affidavits of good moral character and general fitness hereinbefore prescribed.

If the Committee on Character and Fitness is satisfied from its personal examination of the applicant and other evidence that the applicant shall produce that the applicant has such character and general fitness as in the opinion of the Committee justify his admission to practice, that he is able to speak and write the English language correctly and that he has such qualifications as to character and fitness as in the opinion of the Committee justifies his admission to the Bar, and qualifies him to perform the duties of an Attorney and Counselor at law, it shall so certify to the Appellate Division. Upon the production of that certificate which is filed, by the Committee with the Court, and the personal appearance of the applicant before the Court, he is admitted to the Bar, provided he takes the Constitutional Oath of Office in open Court and subscribe the same in a roll or book kept in the office of the Clerk of the Appellate Division for that purpose. (Judiciary Law, sec. 466.) He is also further required as a condition precedent to his practicing law in this State, to register in the office of the Clerk of the Court of Appeals, as required by chapter 35, Laws of 1909. (Judiciary Law, sec. 468.)

The procedure on admission varies somewhat in each department. The practice in each department as it now obtains is as follows:

FIRST DEPARTMENT.

The Committee on Character on receiving a copy of the report of the State Board of Law Examiners, publishes in the New York Law Journal, a notice in the following form:

COURT NOTICE.

APPELLATE DIVISION — SUPREME COURT — FIRST DEPARTMENT.

ADMISSION TO THE BAR.

Candidates for admission to the Bar whose names are appended and who have been certified by the State Board of Law Examiners as having passed the law examinations, are notified to produce and file on or before _____, with the Clerk of the Appellate Division, evidence of good moral character. Such evidence, in order to comply with the rules, must include at least two affidavits from attorneys acquainted with the applicant, which must state that the applicant is to the knowledge of the affiant a person of good moral character, and must set forth in detail the facts upon which such knowledge is based, and such affidavits must be made by practicing attorneys of the Supreme Court personally known to a member of the Committee. Affidavits on printed forms will not be accepted. Each candidate shall also file the certificate received from the State Board of Law Examiners and a sworn statement of his name and place of residence, with particulars as to his education and office experience, upon a form which will be furnished by the Clerk of the Court upon *personal application*. A strict compliance with the foregoing requirements is essential. All applicants who have had their names changed shall notify the clerk of the Appellate Division.

Information is requested as to the moral character of the candidates whose names are appended and as to their quali-

cation to be admitted to practice, and may be sent to any member of the committee. (Signed.)

Committee on Character.

The blank form of statement is as follows:

COMMITTEE ON CHARACTER.

QUESTIONS TO BE ANSWERED BY EACH APPLICANT.

1. Give your full name, age, residence and birth-place. If born in a foreign country, at what age did you come to the United States?

2. What schools have you attended and between what dates?

3. Did you attend college? If so, state the colleges you have attended, the periods of your attendance, and the degrees you have received.

4. Did you attend a law school? If so, what school and when? What, if any, degrees in law, have you received?

5. Have you been employed in, or studied law in, a law office? If so, give a full list of such offices and state the period of your employment or study in each.

6. Have you ever applied for admission to practice as an attorney or counselor in any court in any other State or country? If so, state when and where, and whether you were admitted to the Bar and if so, how long and where you practiced.

7. Have you ever applied for admission to the Bar of the State of New York in any Department other than the First? If so, where, when, and with what result?

8. Have you ever been engaged in any business or profession other than the law? If so, when and where? State fully the names and addresses of your employers, the periods of your employment, and the positions you have occupied.

9. Give the names and addresses of the persons to whom you refer as to your character, and state how long you have known each.

Signature of Applicant.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

....., being duly sworn, says: I have read the foregoing questions and have answered the same in my own handwriting fully and frankly. The answers subscribed by me are true of my own knowledge.

Signature of Applicant.

Sworn to before me this day of
....., 191...

[Applicants must answer ALL questions and sign both the application and the affidavit.]

Appended to the notice and printed therewith are the names and home addresses of the successful candidates. Applicants receive no other or further notice from the Committee on Character and must watch the "Law Journal" for the same.

The applicant must thereupon make personal application to the Clerk of the Appellate Division for the foregoing blank form of statement, to be verified, giving his name, place of residence and the other particulars required by the Committee, which as soon as it is verified must be filed with the certificate of the State Board of Law Examiners and the affidavits of character, with the Clerk of the Appellate Division.

The applicant will be given due notice in the New York Law Journal of the time and place at which he will be required to appear in person before the Committee on Character and also, if his application is approved by the Committee, of the day and hour of his appearance in person before the Appellate Division for admission, at which time he will take the Constitutional Oath of Office in open court, and subscribe the same in a roll or book kept in the office of the Clerk of the Appellate Division for that purpose. •

SECOND DEPARTMENT.

In this Department the Appellate Division has adopted the following special rule:

“RULE RELATING TO THE ADMISSION OF ATTORNEYS IN THE
SECOND DEPARTMENT.

Notice of the time of application for admission as attorneys by those who have passed the examination prescribed by the Rules of the Court of Appeals, will be published in the “Law Journal,” at which time applicants must file with the Clerk the papers enumerated in Rule I of the General Rules of Practice, and appear personally before the Committee on Character to furnish such information as the Committee may desire from them.”

On receipt by the Clerk of the Appellate Division of this Department, of the report of the State Board of Law Examiners, he mails to each of the successful candidates, at his home address as the same appears in his application papers, a notice which will state that the Committee on Character will meet in the court room of the Appellate Division, Borough Hall, Brooklyn, at a time and place therein specified. The applicant must then and there file with the Clerk, the certificate of the State Board of Law Examiners, his affidavits of character and general fitness, as specified in said Rule, and his written answers to the printed questions, which the Committee requires him to answer, as a part of the information which it desires from each of them. These questions are in substantially the same form as those in use in the First Department hereinbefore printed. Each applicant will apply to the Clerk of the Appellate Division, in person, for the printed questions, in case they are not sent to him with the notice above referred to. Each applicant will appear before the Committee on Character, in person, and after the Committee has examined each applicant and reports the names of those whom it recommends to the Court for admission, the applicants are notified by the Clerk of the time and place of their being sworn in, where they must

attend in person, take the Constitutional Oath of Office and subscribe the same in the roll or book kept in the office of the Clerk of the Appellate Division for that purpose.

THIRD DEPARTMENT.

The Appellate Division in this Department has appointed the trial justices residing in each of the judicial districts, constituting the Department, viz: The Third, Fourth and Sixth Judicial Districts, the Committee on Character and Fitness for the Department. Each District Committee passes on the character and fitness of the applicants residing in the district.

Each applicant on receipt of the certificate of the State Board of Law Examiners, must prepare his affidavits of character and fitness in the manner set forth in Rule I of the General Rules of Practice, attach the same to his certificate from the Board of Law Examiners, and appear in person, with the same before some one of the trial justices residing in the district of his residence. The justice will make the examination as to his character and general fitness required by the rule, either then and there or at his convenience, and if he approves of the application, he will sign and attach to the papers presented to him a certificate to that effect, directed to the Appellate Division, on a form, copies of which he will have. When the certificate is signed by one of the justices, the same and accompanying papers must be presented to another of the justices of the district committee, who must also approve and sign the same.

The application must be approved as to character and general fitness by two of the trial justices of the district in which the applicant resides.

The applicant, pursuant to the provision of Rule XV of the Special Rules of the Third Judicial Department, must then file with the clerk of the Appellate Division at Albany, the certificate of the State Board of Law Examiners, his affidavits of character and general fitness, and the certificate of the committee on character and fitness as aforesaid.

Rule XV reads as follows:

RULE XV.

"Candidates for admission to the Bar may be sworn in at the opening of the Court on any Thursday of the term, providing the necessary papers therefor shall have been filed with the Clerk of the Court on or before the Tuesday preceding."

If the above described papers have been filed as therein required, the applicant on any Thursday of the term thereafter, can appear in person and make application to be admitted to practice.

If there are no objections thereto, the applicant is then and there admitted, and thereupon takes the constitutional oath of office in open court and subscribes the same in a roll or book kept in the office of the Clerk of the Appellate Division for that purpose.

FOURTH DEPARTMENT.

The Appellate Division of the Fourth Department has appointed a Committee on Character and Fitness, for each of the three judicial districts constituting that Department, namely, for the Fifth, Seventh and Eighth Judicial Districts. The names of the members of each of these committees can be obtained from the Clerk of the Appellate Division, Fourth Department, Rochester, New York. Each committee passes on the character and fitness of the applicants residing in the district for which it is appointed.

On receipt of the report of the State Board of Law Examiners, the clerk of the Appellate Division mails to each applicant named therein, a notice of which the following is a copy:

SUPREME COURT,

APPELLATE DIVISION, FOURTH DEPARTMENT,

ROCHESTER, N. Y.,, 191..

CLERK'S OFFICE,

., *Clerk.*

Your name has been reported favorably by the Board of Law Examiners. You will please send to this office *immediately* the certificate of said board, together with the affi-

davit of at least two practicing attorneys acquainted with you, residing in the Judicial District in which you reside, that you are of such character and general fitness as justifies your admission to practice; which affidavit must set forth in detail the facts upon which the affiant's knowledge is based.

You will also answer the questions of the "Committee on Character and Fitness," verify the same, using for that purpose the blank mailed to you herewith, and return the same to this office with affidavits of character and fitness.

You will be required to appear before the Committee on Character and Fitness of your Judicial District, at a time and place to be appointed, of which you will receive notice.

.....
Clerk.

The clerk also mails to each applicant a blank containing questions to be answered and verified by each applicant in substantially the same form required in the First Department as hereinbefore set forth.

The applicant thereupon mails his certificate from the State Board of Law Examiners, his affidavits of character and fitness and his signed and verified answers to the questions, to the Clerk of the Appellate Division by whom they are sent to the Committee on Character of the district in which he lives.

The District Committee on Character thereupon gives notice to each applicant of the time and place at which he must appear in person before the Committee.

The Committee makes its final report to the Court in writing. If that report approves, the applicant is then notified by the Clerk of the Court of the day and time, when he must appear in person in open Court and be admitted to practice.

THE STATUTES AND RULES REGULATING ADMISSION
TO THE BAR IN THE STATE OF NEW YORK.

STATUTES.

JUDICIARY LAW.

(Chapter Thirty of the Consolidated Laws; Laws 1909, ch. 35.)

§ 53. Power of court of appeals as to admission of attorneys and counsellors.

1. The court of appeals may from time to time make, alter, and amend, rules not inconsistent with the constitution or statutes of the state, regulating the admission of attorneys and counsellors at law, to practice in all the courts of record of the state.

2. The court may make such provisions as it shall deem proper for admission to practice as attorneys and counsellors, of persons who have been admitted to practice in other states or countries.

3. The court shall prescribe rules providing for a uniform system of examination of candidates for admission to practice as attorneys and counsellors, which shall govern the state board of law examiners in the performance of its duties.

4. The rules established by the court of appeals, touching the admission of attorneys and counsellors to practice in the courts of record of the state, shall not be changed or amended, except by a majority of the judges of that court. A copy of each amendment to such rules must, within five days after it is adopted, be filed in the office of the secretary of state.

5. Nothing contained in this chapter prevents the court of appeals from dispensing, in the rules established by it, with the whole or any part of the stated period of clerkship, required from an applicant, or with the examination where the applicant is a graduate of the Albany Law School,

being the law department of the Union University, or of the law department of the University of the City of New York, or of the Law School of Columbia College, or of the Law School of the University of Buffalo, or the New York Law School, or the College of Law, Cornell University, or of the School of Law, Syracuse University, or the Brooklyn Law School of Saint Lawrence University, or Fordham University Law School, and produces his diploma upon his application for admission.

Subd. 1, Code Civil Procedure, § 193.

Subds. 2, 3, Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 56, 88, 460-465, 467.

Subd. 4, Code Civil Procedure, § 57. For remainder of section see Executive Law, § 30.

Subd. 5, Code Civil Procedure, § 58.

§ 56. Appointment and compensation of state board of law examiners.

The members of the state board of law examiners shall be appointed from time to time, by the court of appeals, as provided in section four hundred and sixty-one of this chapter. The court of appeals shall fix the compensation of the members of the said board.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 88, 460-465, 467.

§ 88. Admission to and removal from practice by Appellate division.

1. Upon the certificate of the state board of law examiners, that a person has passed the required examination, if the appellate division of the supreme court in the department in which such person lives shall find such person is of good moral character, it shall enter an order licensing and admitting him to practice as an attorney and counsellor in all courts of the state.

2. An attorney and counsellor, who is guilty of any deceit, malpractice, crime or misdemeanor, or who is guilty of any fraud or deceit in proceedings by which he was admitted to practice as an attorney and counsellor of the courts of record of this state, may be suspended from prac-

tice, or removed from office, by the appellate division of the supreme court. Any fraudulent act or representation by an applicant in connection with his application or admission shall be sufficient cause for the revocation of his license by the appellate division of the supreme court granting the same.

3. Whenever any attorney and counsellor-at-law shall be convicted of a felony, there may be presented to the appellate division of the supreme court a certified or exemplified copy of the judgment of such conviction, and thereupon the name of the person so convicted shall, by order of the court, be stricken from the roll of attorneys.

4. Upon a reversal of the conviction for felony of an attorney and counsellor-at-law, or pardon by the president of the United States or governor of this state, the appellate division shall have power to vacate or modify such order or debarment.

5. The presiding justice of the appellate division making the order of designation of a district attorney within the department to prosecute a case for the removal or suspension of an attorney or counsellor, or the order of reference in such cases, may make an order directing the expenses of such proceedings to be paid by the county treasurer of the county where the attorney or counsellor removed or suspended, or against whom charges were made as prescribed in section four hundred and seventy-six of this chapter, had his last known place of residence or principal place of business, which expenses shall be a charge upon such county.

Subd. 1, Code of Civil Procedure, § 56.

Subd. 2, Code Civil Procedure, §§ 56, 67.

Subds. 3, 4, Code Civil Procedure, § 67.

Subd. 5, Code Civil Procedure, § 68.

For remainder of § 56, see this chapter, §§ 53, 56, 460-465, 467.

For remainder of § 67 see this chapter, § 477.

For remainder of § 68 see this chapter, § 476.

ARTICLE 15

ATTORNEYS AND COUNSELLORS.

- Section 460. Examination and admission of attorneys.
 461. State board of law examiners continued.
 462. Times and places of examinations.
 463. Certification by state board of successful candidates.
 464. Annual account by state board of law examiners.
 465. Fee for examinations.
 466. Attorney's oath of office.
 467. Race or sex no bar to admission to practice.
 468. Registration of attorneys before beginning to practice.
 469. Official register of attorneys to be kept by clerk of court of appeals.

§ 460. Examination and admission of attorneys.

A citizen of the state, of full age, applying to be admitted to practice as an attorney or counsellor in the courts of record of the state, must be examined and licensed to practice as prescribed in this chapter.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 461-465, 467.

§ 461. State board of law examiners continued.

The state board of law examiners is continued. Said board shall consist of three members of the bar, of at least ten years' standing, who shall be appointed, from time to time, by the court of appeals, and shall hold office, as a member of such board for a term of three years, and until the appointment of his successor.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 460, 462-465, 467.

§ 462. Times and places of examinations.

There shall be examinations of all persons applying for admission to practice as attorneys and counsellors-at-law at

least twice in each year in each judicial department, and at such other times and places as the court of appeals may direct.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 460, 461, 463-465, 467.

§ 463. Certification by state board of successful candidates.

The State board of law examiners shall certify to the appellate division of the supreme court of the department in which each candidate has resided for the past six months every person who shall pass the examination, provided such person shall have in other respects complied with the rules regulating admission to practice as attorneys and counselors, which fact shall be determined by said board before examination.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 460-462, 464, 465, 467.

§ 464. Annual account by state board of law examiners.

The state board of law examiners shall render during the month of January, an annual account of all their receipts and disbursements to the court of appeals.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 460-463, 465, 467.

§ 465. Fee for examinations.

Every person applying for examination for admission to practice as an attorney and counsellor-at-law shall pay such fee, not to exceed fifteen dollars, as may be fixed by the court of appeals as necessary to cover the cost of such examination. On payment of one examination fee the applicant shall be entitled to the privilege of not exceeding three examinations.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 460-464, 467.

§ 466. Attorney's oath of office.

Each person, admitted as prescribed in this chapter must, upon his admission, take the constitutional oath of office in open court, and subscribe the same in a roll or book, to be kept in the office of the clerk of the appellate division of the supreme court for that purpose.

Code Civil Procedure, § 59. For remainder of section see this chapter, § 264.

§ 467. Race or sex no bar to admission to practice.

Race or sex shall constitute no cause for refusing any person examination or admission to practice.

Code Civil Procedure, § 56. For remainder of section see this chapter, §§ 53, 56, 88, 460-465.

§ 468. Registration of attorneys before beginning to practice.

Every person who is hereafter duly licensed and admitted to practice as an attorney and counsellor-at-law in the courts of record of this state by an appellate division of the supreme court, shall subscribe and take and file an oath or affirmation which must be substantially in the following form, the blanks being properly filled before he begins or is entitled to begin to practice for another as an attorney and counsellor-at-law in the courts of this state or in any court in the county of New York or in the county of Kings:

State of New York, }
County, } ss.:

I,, being duly sworn (or affirmed) do depose and say that I am a natural born citizen of the United States (if naturalized, state when and where) and now reside at (or, if a resident of an adjoining state and admitted to practice in the courts of record of this state and whose office for the transaction of law business is within this state, state the fact), that I was duly and regularly licensed and admitted to practice as an attorney-at-law or as an attorney and counsellor-at-law in the courts of record of this state at the term, 18...., of the general term (or appellate division) of the supreme court (or other court as the case may be) held at and that I took the constitutional oath of office.

Subscribed and sworn to before me,
 this....day of....., 190...

which oath or affirmation shall be filed in the office of the clerk of the court of appeals by the person making the same, provided, nevertheless, that such affidavit or affirmation may state that the deponent or affirmant believes that he took the constitutional oath of office in lieu of stating unqualifiedly that he did so, where the affidavit or affirmation states, or in

substance shows, the deponent's or affirmant's lack of positive or certain recollection of having taken such oath, or shows other substantial reason for thus qualifying the affidavit or affirmation on that subject. If any attorney or counsellor-at-law or solicitor in chancery or attorney of or in the supreme court on the first Monday of July, eighteen hundred and forty-seven who was entitled to file the said oath or affirmation under the provisions of laws of eighteen hundred and ninety-eight, chapter one hundred sixty-five, as amended, before July first, eighteen hundred and ninety-nine, has failed to do so, the special term of the supreme court of the judicial district where such attorney-at-law or attorney or counsellor-at-law resides, may, upon proof by affidavit showing reasonable grounds therefor, grant an order permitting the applicant to make and file the oath or affirmation required herein, with the same effect as if the same had been made and filed within the time above stated, and relieving him from penalties and prosecutions by reason of failure to make and file such oath or affirmation within the time required. Every person filing with the clerk of the court of appeals the oath or affirmation hereinbefore provided shall pay to the said clerk at the time of such filing the sum of twenty-five cents to defray the necessary disbursements incurred by him in carrying out the provisions of this article. A person who practices any fraud or deceit or knowingly makes any false statement in the oath or affirmation in and by this section required to be made and filed is guilty of felony.

L. 1898, Ch. 165, § 1, as amended by L. 1899, Ch. 225, § 1; L. 1898, Ch. 165, § 2; L. 1898, Ch. 165, § 5, as amended by L. 1906, Ch. 154, § 1.

§ 469. Official register of attorneys to be kept by clerk of court of appeals

It shall be the duty of the clerk of the court of appeals to file in his office the said oaths or affirmations aforesaid, and to compile the statements contained therein, and to enter therefrom in a bound book or volume to be kept by him for that purpose, which shall be known and designated as and is hereby made the "official register of attorneys and counsellors-at-law in the state of New York," in the alphabetical

order of the first letter of their surnames, the names and residences and the title of the court and the time and place where admitted, and the date the oath or affirmation aforesaid was filed, of all persons who have filed in his said office the oath or affirmation as aforesaid, which said "official register of attorneys and counsellors-at-law in the state of New York," is hereby declared to be a public record and presumptive evidence that the individuals therein named are duly registered to practice as attorneys and counsellors-at-law in the courts of record of this state or in any court in the counties of New York and Kings.

L. 1898, Ch. 165, § 3.

§ 264. Duties of clerk of appellate division in each department.

6. The clerk of each department of the appellate division, upon the payment of the fees allowed by law, must deliver to the person admitted to practice as an attorney and counsellor a certificate under his hand and official seal, stating that such person has been so admitted, and that he has taken and subscribed the constitutional oath of office as prescribed in section four hundred and sixty-six of this chapter.

Code Civil Procedure, § 59.

NOTE.

The general statutory provisions governing attorneys and counsellors, not hereinbefore set forth may be found in Judiciary Law (Ch. 30, Consolidated Laws, Ch. 35, Laws 1909) secs. 470-479.

Penal Law (Ch. 40, Consolidated Laws, Ch. 88, Laws 1909), art. 24, secs. 270, 271, as amended Laws 1910, Ch. 327, secs. 272, 273, 274, 275, 276, 277, 278, 279 and 280 (Corporations not to practice law), and sec. 1876.

RULES

In Relation to the Admission of Attorneys and Counselors-at-Law.

JUNE 1, 1908.

RULES OF THE COURT OF APPEALS,

Adopted by the judges of the Court of Appeals on December 2, 1895, to take effect on January 1, 1896, as amended April 24, 1908, to take effect June 1, 1908.

RULE I.

No person shall be admitted to practice as an attorney or counselor in any court of record in this State, without a regular admission to the bar and license to practice granted by the Appellate Division of the Supreme Court.

RULE II.

Any person who has been admitted to practice, and has practiced three years as an attorney and counselor in the highest court of law in another State, and any person who has thus practiced in another country, or who, being an American citizen and domiciled in a foreign country, has received such diploma or degree therein, as would have entitled him if a citizen of such foreign country to practice law in its courts, may, in the discretion of the Appellate Division of the Supreme Court, be admitted and licensed without an examination. But he must possess the other qualifications required by these rules, and must produce a letter of recommendation from one of the judges of the highest court of law of such other State, or country; or furnish other satisfactory evidence of character and qualifications.

A person who resides in an adjoining State, upon compliance with this rule, may, without change of residence, be admitted to practice on sufficient proof that he intends forthwith to open and permanently to maintain an office for the transaction of law business in this State.

RULE III.

All other persons may be admitted and licensed upon producing and filing with the court the certificate of the State Board of Law Examiners that the applicant has satisfactorily passed the examination prescribed by these rules, and has complied with their provisions; and upon producing and filing with the court evidence that such applicant is a person of good moral character, which must be shown by the affidavits of two reputable persons of the town or city in which he resides, one of whom must be a practicing attorney of the Supreme Court. Such affidavits must state that the applicant is, to the knowledge of the affiant, a person of good moral character, and must set forth in detail the facts upon which such knowledge is based; but such affidavits shall not be conclusive and the court may make further examination and inquiry.

RULE IV.

To entitle an applicant to an examination as an attorney and counselor, he must prove by his own affidavit, to the satisfaction of the State Board of Law Examiners:

First. That he is a citizen of the United States, twenty-one years of age, stating his age, and an actual and not a constructive resident of the State, for not less than six months immediately preceding and that he has not been examined for admission to practice and been refused admission and license within three months immediately preceding.

Second. That he has studied law in the manner and according to the conditions hereinafter prescribed for a period of three years, and that he is the same person mentioned in his annexed preliminary papers, except that if the applicant be a graduate of any college or university, his period of study may be two years instead of three, and except also that persons who have been admitted as attorneys in the highest court of original jurisdiction of another State or country, and have remained therein as practicing attorneys for at least one year, may be admitted to such examination after a period of law-study of one year within this State.

RULE V.

Applicants for examination shall be deemed to have studied law within the meaning of these rules only when they have complied with the following terms and conditions, viz.:

1. The provisions for requisite periods of study must be fulfilled by serving a regular clerkship in the office of a practicing attorney of the Supreme Court in this State after the age of eighteen years; or after such age, by satisfactory attendance upon and successfully completing the prescribed course of instruction at an incorporated law school, or a law school connected with an incorporated college or university having a law department organized, with competent instructors and professors, in which instruction as hereinafter provided is regularly given; or after such age, by pursuing such course of study, in part by attendance at such law school, and in part by serving such clerkship.

2. If the applicant be a graduate of a college or university, he must have pursued the prescribed course of study after his graduation; and if he be a person admitted to the bar of another State or country, he must have pursued his prescribed period of study after having remained as a practicing attorney in such other State or country for the period of one year.

3. Applicants who are not graduates of a college, or university, subject to the limitations and requirements hereinafter, in this subdivision, expressed, or members of the bar as above described, before entering upon the clerkship or attendance at a law school herein prescribed shall have passed an examination conducted under the authority and in accordance with the ordinances and rules of the University of the State of New York, in English, three years; mathematics, two years; Latin, two years; science, one year; history, two years; or in their substantial equivalents as defined by the rules of the University, and shall have filed a certificate of such fact, signed by the Commissioner of Education, with the clerk of the Court of Appeals, whose duty it shall be to return to the person named therein a certified

copy of the same, showing the date of such filing. The Regents may accept as the equivalent of and substitute for the examination in this rule prescribed, either, first, a certificate, properly authenticated, of having successfully completed a full year's course of study in any college, or university; second, a certificate, properly authenticated, of having satisfactorily completed a four years' course of study in any institution registered by the Regents as maintaining a satisfactory academic standard; or, third, a Regents' diploma.

All graduates of a college or university existing under the government or laws of any foreign country other than those where English is the language of the people, and all applicants who apply for law students' certificates upon equivalents or substitutes, as above provided, all or any part of which are earned or issued in said foreign countries, shall pass the Regents' examination in second year English. The Regents' certificate above prescribed shall be deemed to take effect as of the date of the completion of the Regents' examination, as the same shall appear upon said certificate.

4. Satisfactory attendance upon and the successful completion of the prescribed course of instruction at a law school, the school year of which shall consist of not less than thirty-two school weeks, exclusive of vacations, in which not less than twelve hours of attendance upon law lectures or recitations of such prescribed course to be given or conducted by regular members of the faculty, are required in each week, shall be deemed a year's attendance under this rule. In computing the period of clerkship a vacation actually taken, not exceeding two months in each year, shall be allowed as a part of such year.

It shall be the duty of attorneys with whom a clerkship shall be commenced to file a certificate of the same in the office of the clerk of the Court of Appeals, which certificate shall in each case state the date of the beginning of the period of clerkship, and such period shall be deemed to commence at the time of such filing, and shall be computed by the calendar year. In the case of a qualified law school in which the school year consists of less than an aggregate of

384 hours of attendance upon law lectures or recitations, but where the prescribed course for graduation is three years, a student who graduates therein upon the completion of the prescribed course shall be entitled to be credited with two years' attendance under this rule. The same period of time shall not be duplicated for different purposes, except that a student attending a law school as herein provided, and who, during the vacations of such school, not exceeding three months in any one year, shall pursue his studies in the office of a practicing attorney, shall be allowed to count the time so occupied during such vacation or vacations as part of the clerkship in a law office specified in these rules.

Fifth. The Justices for each Appellate Division may adopt for their several and respective departments such additional special rules for ascertaining the moral and general fitness of applicants as to such Justices may seem proper.

RULE VI.

The State Board of Law Examiners, before admitting an applicant to an examination, shall require proof that the preliminary conditions prescribed by these rules have been fulfilled, which proof shall be made as follows, viz.:

1. That the applicant is a college graduate, by the production of his diploma or certificate of graduation under the seal of the college.

2. That he has been admitted to the bar of another State or country, by the production of his license or certificate executed by the proper authorities.

3. That he has served a regular clerkship in the office of a practicing attorney of the Supreme Court in this State, after the age of eighteen years, by producing and filing with the Board a certified copy of the attorney's certificate as filed in the office of the clerk of the Court of Appeals, and producing and filing an affidavit of the attorney or attorneys with whom such clerkship was served, showing the actual service of such a clerkship, the continuance and end thereof, and that not more than two months' vacation was taken in

any one year. Both of said affidavits must be to the effect that during the entire period of each clerkship, except during the stated vacation time, the applicant was actually employed by said attorney as a regular law clerk and student in his law office, and, under his direction and advice, engaged in the practical work of the office during the usual business hours of the day.

4. The time of study allowed in a law school must be proved by the certificate of the teacher or president of the faculty under whose instructions the person has studied, under the seal of the school, if such there be, in addition to the affidavit of the applicant, which must also state the age at which the applicant began his attendance at such law school. Said certificate and affidavit must, also, state the facts required by subdivision four of Rule V; which proof must be satisfactory to the Board of Examiners.

5. That the applicant has passed the Regents' examination or its equivalent, must be proved by the production of a certified copy of the Regents' certificate filed in the office of the clerk of the Court of Appeals, as hereinbefore provided.

6. When it satisfactorily appears that any diploma, affidavit or certificate required to be produced has been lost or destroyed without the fault of the applicant, or has been unjustly refused or withheld, or by the death or absence of the person or officer who should have made it, cannot be obtained, the Board of Law Examiners may accept such other proof of the requisite facts as they shall deem sufficient.

7. A law student whose clerkship or attendance at a law school has already begun as shown by the records of the Court of Appeals, or of any incorporated law school or law school established in connection with any college or university, may at his option file or produce instead of the proofs required by these rules, those required by the rules of the Court of Appeals adopted December 2, 1895.

RULE VII.

When the filing of a certificate as required by these rules has been omitted by excusable mistake, or without fault, the court may order such filing as of the proper date. All certificates heretofore issued to law students by the Board of

Regents, and founded upon equivalents instead of an actual examination, are validated and made effectual, and may be accepted as sufficient by the Board of Law Examiners.

RULE VIII.

The State Board of Law Examiners shall be paid as compensation, each the sum of \$2,000 per year, and, in addition, such further sum as the court may direct, and an annual sum not exceeding \$2,500 per year shall be allowed for necessary disbursements of the Board. Every applicant for examination shall pay to the examiners a fee of fifteen dollars, which shall be applied upon the compensation and allowance above provided, and any surplus thereafter remaining shall be held by the treasurer of the State Board of Law Examiners and deposited in some bank in good standing in the city of Albany to his credit and subject to his draft as such treasurer when approved by the chief judge. The examinations held by such State Board of Examiners may be conducted by oral or written questions and answers, or partly oral and partly written, but shall be as nearly uniform in the knowledge and capacity which they shall require, as is reasonably possible. An applicant who has failed to pass one examination cannot again be examined until at least three months after such failure.

RULE IX.

These rules shall take effect on July 1, 1907.

These amendments shall take effect on the first day of June, 1908, but the amendment to subdivision third of Rule V shall not apply to any student whose clerkship or attendance at a qualified law school has already begun, or shall have begun prior to June 1, 1908, as shown by the records of the Court of Appeals, or of any incorporated law school, or law school established in connection with any college or university.

Rules of the Court of Appeals for the Admission of Attorneys and Counsellors-at-Law.

AS AMENDED MAY 17, 1911. IN EFFECT JULY 1, 1911.

RULE I.

GENERAL REGULATION AS TO ADMISSION.

No person shall be admitted to practice as an attorney or counselor in any court of record of the State except upon an order of the Appellate Division of the Supreme Court admitting him to the bar and licensing him to practice upon compliance with these rules.

RULE II.

ADMISSION WITHOUT EXAMINATION.

The following classes of persons may in the discretion of the Appellate Division be admitted and licensed without examination:

1. Any person admitted to practice and who has practiced five years as a member of the bar in the highest law court in any other state or territory of the American Union or in the District of Columbia.

2. Any person admitted to practice and who has practiced five years in another country whose jurisprudence is based on the principles of the English common law.

3. Any American citizen domiciled in a foreign country whose jurisprudence is based on the principles of the English common law holding a diploma or degree which would entitle him to practice law in the courts of such foreign country if a citizen thereof.

Any person admitted under this rule must possess the other qualifications required by these rules and must produce a letter of recommendation from one of the judges of the highest law court of such other state or country, or furnish other satisfactory evidence of character and qualifications.

An attorney and counselor from another state or foreign jurisdiction may in the discretion of any court of record be admitted *pro hac vice* to participate in the trial or argument of any cause in which he may be employed.

RULE III.

ADMISSION ON EXAMINATION.

Three classes of persons may be admitted to the bar upon examination:

1. Persons who are not graduates of a college or university;
 2. Persons who are graduates of a college or university;
- and
3. Persons who have been admitted as attorneys and have practiced three years in another state or country.

In each class the applicant must prove by his own affidavit to the satisfaction of the State Board of Law Examiners that he is a citizen of the United States, twenty-one years of age, stating his age, and an actual and not a constructive resident of the State for not less than six months immediately preceding and that he has not been examined for admission to practice and been refused admission within four months, and that he has studied law in the manner and according to the conditions in these rules prescribed.

Applicants in the first class (*i. e.*, persons who are not graduates of a college or university) must have studied law for a period of four years. Such an applicant may pursue his course of law study wholly by serving a clerkship in the office of a practicing attorney; or partly by serving such clerkship and partly by attending a law school; but every such applicant must serve such clerkship for a period of at least one year continuously either before examination by the State Board of Law Examiners or after such examination and prior to admission to the bar.

Applicants in the second class (*i. e.*, persons who are graduates of a college or university) must have studied law for a period of three years. Such an applicant may pursue his course of law study wholly by serving a clerkship in the office

of a practicing attorney; or wholly by attending a law school; or partly by serving such clerkship and partly by attending a law school.

Applicants in the third class (*i. e.*, persons who have been admitted as attorneys and have practiced three years in another state or county) must have studied law for a period of one year within this State and pursue such course of study either by serving a clerkship or by attendance upon a law school as the applicant may elect.

Candidates for admission to the bar under this rule (*i. e.*, upon examination) may be admitted and licensed upon producing and filing with the court the certificate of the State Board of Law Examiners that the applicant has satisfactorily passed the examination prescribed by these rules and has complied with their provisions, and upon producing and filing with the court, in the case of applicants in the first class (*i. e.*, persons who are not graduates of a college or university), evidence that he has served a regular clerkship of one year in this State with an attorney or attorneys in regular practice, either before or after having passed such examination. The applicant must also produce and file evidence that he is a person of good moral character which must be shown by the affidavits of two reputable persons of the town or city in which he resides, one of whom must be a practicing attorney of the Supreme Court. Such affidavits must state that the applicant is, to the knowledge of the affiant, a person of good moral character, and must set forth in detail the facts upon which such knowledge is based; but such affidavits shall not be conclusive and the court may make further examination and inquiry.

If the applicant be a graduate of a college, or university, he must have pursued the prescribed course of law study after his graduation, and, if he be a person admitted to the bar of another state or country, he must have pursued his prescribed period of law study after having remained as a practicing attorney in such other state or country for the period of three years.

RULE IV.**REGULATIONS CONCERNING PRELIMINARY STUDIES.**

All candidates for admission to the bar upon examination, except applicants in the third class mentioned in Rule III (*i. e.*, persons who have been admitted and have practiced three years in another state or country), must have pursued a preliminary course of study evidenced by graduation from a college or university, or by passing Regents' examination or the equivalent, as hereinafter prescribed.

Applicants who are not graduate of a college, or university, subject to the limitations and requirements hereinafter, in this subdivision, expressed, or members of the Bar as above described, before entering upon the clerkship or attendance at a law school herein prescribed shall have passed an examination conducted under the authority and in accordance with the ordinances and rules of the University of the State of New York, in English, three years; mathematics, two years; Latin, two years; science, one year; history, two years; or in their substantial equivalents as defined by the rules of the University, and shall have filed a certificate of such fact, signed by the Commissioner of Education, with the clerk of the Court of Appeals, whose duty it shall be to return to the person named therein a certified copy of the same, showing the date of such filing. The Regents may accept as the equivalent of and substitute for the examination in this rule prescribed, either, first, a certificate, properly authenticated, of having successfully completed a full year's course of study in any college, or university; second, a certificate, properly authenticated, of having satisfactorily completed a four years' course of study in any institution registered by the Regents as maintaining a satisfactory academic standard; or, third, a Regents' diploma.

All graduates of a college or university existing under the government or laws of any foreign country other than those where English is the language of the people, and all applicants who apply for law students' certificates upon equivalents or substitutes, as above provided, all or any part of which are

earned or issued in said foreign countries, shall pass the Regents' examination in second year English. The Regents' certificate above prescribed shall be deemed to take effect as of the date of the completion of the Regents' examination, as the same shall appear upon said certificate.

RULE V.

REGULATIONS CONCERNING STUDY AT LAW SCHOOLS.

The provisions of these rules for study at a law school must be fulfilled by good and regular attendance and successfully completing the prescribed course of instruction at an incorporated law school, or a law school connected with an incorporated college or university, having a law department organized with competent instructors and professors, in which instruction as hereinafter provided is regularly given.

Good and regular attendance upon and the successful completion of the prescribed course of instruction at a law school, the school year of which shall consist of not less than thirty-two school weeks, exclusive of vacations, in which not less than ten hours of attendance upon law lectures or recitations of such prescribed course, to be given or conducted by regular members of the faculty, are required in each week, shall be deemed a year's attendance under this rule.

The same period of time shall not be duplicated for different purposes; except that a student attending a law school, as herein provided, and who, during the vacations of such school, not exceeding three months in any one year, shall pursue his studies in the office of a practicing attorney, shall be allowed to count the time so occupied during such vacation or vacations as part of the clerkship in a law office specified in these rules.

RULE VI.

REGULATIONS CONCERNING CLERKSHIP.

The provisions of these rules for studying law by the service of a regular clerkship must be fulfilled by serving such clerkship in the office of a practicing attorney of the Supreme Court in this State, after the candidate has attained the age of eighteen years.

It shall be the duty of attorneys, with whom a clerkship shall be commenced, to file a certificate of the same in the office of the clerk of the Court of Appeals, which certificate shall, in each case, state the date of the beginning of the period of clerkship, and such period shall be deemed to commence at the time of such filing and shall be computed by the calendar year.

In computing the period of clerkship a vacation actually taken, not exceeding two months in each year, shall be allowed as a part of such year.

RULE VII.

PROOF TO ENTITLE CANDIDATE TO EXAMINATION.

The State Board of Law Examiners, before admitting an applicant to an examination, shall require proof that the preliminary conditions prescribed by these rules have been fulfilled; which proof shall be made as follows, viz.:

First. That the applicant is a college graduate, by the production of his diploma, or certificate of graduation, under the seal of the college.

Second. That he has been admitted to the bar of another state or country, by the production of his license, or certificate, executed by the proper authorities.

Third. In all cases where the service of a clerkship is required, that he has served a regular clerkship in the office of a practicing attorney of the Supreme Court in this State, after the age of eighteen years, by producing and filing with the Board a certified copy of the attorney's certificate, as filed in the office of the clerk of the Court of Appeals, and producing and filing an affidavit of the attorney or attorneys with whom such clerkship was served, showing the actual service of such a clerkship, the continuance and end thereof, and that not more than two months' vacation was taken in any one year. Both of said affidavits must be to the effect that during the entire period of such clerkship, except during the stated vacation time, the applicant was actually employed by said attorney as a regular law clerk and student in his law office, and

under his direction and advice, engaged in the practical work of the office during the usual business hours of the day.

Fourth. The time of study allowed in a law school must be proved by the certificate of the teacher or president of the faculty, under whose instructions the person has studied, under the seal of the school, if such there be, in addition to the affidavit of the applicant, which must, also, state the age at which the applicant began his attendance at such law school. Such certificate and affidavit must, also, show that the law school prescribes the course of instruction contemplated by these rules, and each shall also contain the statement that said applicant took the prescribed course of instruction required at said school for the degree of Bachelor of Laws while in attendance thereat, and bona fide took and successfully passed all examinations in all the subjects required for said degree during such period of attendance, in each case specifying the subjects in which said applicant took and passed his examinations as aforesaid, which proof must be satisfactory to the Board of Examiners.

Fifth. That the applicant has passed the Regents' examination, or its equivalent, must be proved by the production of a certified copy of the Regents' certificate filed in the office of the clerk of the Court of Appeals, as hereinbefore provided.

Sixth. When it satisfactorily appears that any diploma, affidavit, or certificate, required to be produced has been lost, or destroyed, without the fault of the applicant, or has been unjustly refused or withheld, or by the death or absence of the person or officer who should have made it, cannot be obtained, the Board of Law Examiners may accept such other proof of the requisite facts as they shall deem sufficient.

Seventh. A law student whose clerkship, or attendance at a law school, has already begun, as shown by the records of the Court of Appeals, or of any incorporated law school, or law school established in connection with any college or university, may, at his option, file or produce, instead of the proofs required by these rules, those required by the Rules of the Court of Appeals in force June 1, 1908.

RULE VIII.**REGULATIONS CONCERNING EXAMINATION.**

The examination held by such State Board of Examiners may be conducted by oral or written questions and answers, or partly oral and partly written, but shall be as nearly uniform in the knowledge and capacity which they shall require, as is reasonably possible. Every applicant shall be given and required to pass a satisfactory examination in the canons of ethics adopted by the American Bar Association and by the New York State Bar Association. An applicant who has failed to pass one examination cannot again be examined, until at least four months after such failure.

The State Board of Law Examiners shall be paid as compensation, each, the sum of two thousand dollars per year, and, in addition, such further sum as the court may direct, and an annual sum not exceeding two thousand dollars per year shall be allowed for necessary disbursements of the Board. Every applicant for examination shall pay to the examiners a fee of fifteen dollars, which shall be applied upon the compensation and allowance above provided, and any surplus thereafter remaining shall be held by the treasurer of the State Board of Law Examiners and deposited in some bank, in good standing, in the city of Albany, to his credit and subject to his draft as such treasurer, when approved by the Chief Judge.

RULE IX.**RELIEF FROM EXCUSABLE MISTAKES.**

When the filing of a certificate, as required by these rules, has been omitted by excusable mistake, or without fault, the court may order such filing as of the proper date.

RULE X.**ADDITIONAL RULES BY THE APPELLATE DIVISION.**

The Justices of the Appellate Division in each department may adopt for their several and respective departments such additional special rules for ascertaining the moral and general fitness of applicants as to such Justices may seem proper.

These rules shall take effect on July 1, 1911.

SUPREME COURT RULE.**General Rules of Practice.****RULE I.**

Applicants for admission as attorneys.— Within ten days after the first day of January in each year, the Appellate Division in each department shall appoint a committee on character and fitness of not less than three for the department or may appoint a committee for each judicial district within the department, to whom shall be referred all applications for admission to practice as attorney and counselor at law, such committee to continue in office until their successors are appointed. To the respective committees shall be referred all applications for admission to practice, either upon the certificate of the State Board of Law Examiners or upon motion under Rule 2 of the Rules of the Court of Appeals for the admission of attorneys and counselors at law. The committee shall require the attendance before it or a member thereof of each applicant, with the affidavit of at least two practicing attorneys acquainted with such applicant, residing in the judicial district in which the applicant resides, that he is of such character and general fitness as justifies admission to practice, and the affidavit must set forth in detail the facts upon which the affiant's knowledge of the applicant is based, and it shall be the duty of the committee to examine each applicant and the committee must be satisfied from such examination and other evidence that the applicant shall produce that the applicant has such qualifications as to character and general fitness as in the opinion of the committee justify his admission to practice, and no person shall be admitted to practice except upon the production of a certificate from the committee to that effect, unless the court otherwise orders.

No applicant shall be entitled to receive such a certificate who is not able to speak and to write the English language intelligently, nor until he affirmatively establishes to the satisfaction of the committee that he possesses such a char-

acter as justifies his admission to the Bar and qualifies him to perform the duties of an attorney and counselor at law.

An applicant for admission to practice as an attorney and counselor at law on motion, under the provisions of Rule 2 of the Rules of the Court of Appeals for the admission of attorneys and counselors at law, must present to the court proof that he has been admitted to practice as an attorney and counselor at law in the highest court of law in another State or in a country whose jurisprudence is based upon the principles of the common law of England; a certificate, executed by the proper authorities, that he has been duly admitted to practice in such State or country; that he has actually remained in said State or country and practiced in such court as attorney and counselor at law for at least three years; a certificate from a judge of such court that he has been duly admitted to practice and has actually continuously practiced as an attorney and counselor at law for a period of at least three years after he has been admitted, specifying the name of the place or places in which he has so practiced and that he has a good character as such attorney. Such certificate must be duly certified by the clerk of the court of which the judge is a member and the seal of the court must be attached thereto. He must also prove that he is a citizen of the United States and has been an actual resident of the State of New York or of an adjoining State for at least six months prior to the making of the application, giving the place of his residence by street and number, if such there be, and the length of time he has been such resident. He shall also submit the affidavits of two persons who are residents of the judicial district in which he resides, one of whom must be an attorney and counselor at law, that he is of such character and general fitness as justifies admission to practice, and the affidavit must set forth in detail the facts upon which the affiant's knowledge of the applicant is based. In all cases the applicant must appear in person before the court on the motion for his admission and also before the committee on character and fitness for the district in which the application is made. When the applicant resides in an adjoining State

and a motion is made to admit him to practice in this State without actual residence herein, in addition to the foregoing facts, the applicant must prove to the satisfaction of the court that he has opened and maintains an office in this State for the transaction of law business therein.

In all cases the applicant for admission must file with the clerk of the Appellate Division of the proper department the papers required for his admission as hereinbefore specified prior to or at the time of the motion for admission to practice.

RULES OF STATE BOARD OF LAW EXAMINERS.

(As amended to take effect July 1, 1911.)

RULE I.

Each applicant for examination must file with the Secretary of the Board at least fifteen days before the day appointed for holding the examination at which he intends to apply, the preliminary proofs required by the "Rules of the Court of Appeals for the admission of attorneys and counselors-at-law," from which it must appear affirmatively and specifically that all the preliminary conditions prescribed by said rules have been fulfilled, and also proof of the residence of the applicant for six months prior to the date of the said examination, giving place, with street and number, if any, which must be made by his own affidavit. Said affidavit must also state that such residence is actual and not constructive. The Board in its discretion may order additional proofs of residence to be filed, and may require an applicant to appear in person before it, or some member thereof, and be examined concerning his qualifications to be admitted to the examinations. The examination fee of \$15 must be paid to the Treasurer at the time the application for examination is filed.

To entitle an applicant to a re-examination, he must notify the Secretary by mail of his desire therefor, at least fifteen days before the examination at which he intends to appear and file with him, at the same time, his own affidavit stating that he is and has been for the six months prior to

such examination an actual and not constructive resident of this State, giving the place of such residence, and street and number, if any.

RULE II.

Each applicant must be a citizen of the State, of full age; he may be examined in any department, whether a resident thereof or not, but the fact of his having passed the examination will be certified to the Appellate Division of the Judicial Department in which he has resided for the six months prior to his examination. He must, however, entitle his papers in the department in which he resides.

NOTE.—An applicant must appear for examination in the department in which he entitles his papers, unless permission of the Board otherwise be granted at least fifteen days before the day appointed for holding the examination.

RULE III.

In applying the provisions of Rules III and VII of the Rules of the Court of Appeals, "For the admission of attorneys and counselors-at-law," the Board will require proof that the college or university of which an applicant claims to be a graduate, maintains a satisfactory standard in respect to the course of study completed by him. In case the college or university is registered with the Board of Regents of the State of New York as maintaining such standard, the applicant must submit to the Board, with his diploma or certificate of graduation, the certificate of the said Board of Regents to that effect, which will be accepted by this Board as *prima facie* evidence of the fact. Such certificate need not be filed in cases where the Board of Regents, by a general certificate, has certified to this Board that the said college or university maintains a satisfactory college standard leading to the degree with which the applicant graduated. In all other cases the applicant must submit with his diploma or certificate of graduation satisfactory proof of the course of study completed by him and of the character of the college or university of which he claims to be a graduate.

RULE IV.

The papers filed by each applicant must be attached together, and there must be indorsed upon them the name of the applicant. The papers must be entitled, "In the matter of the application of ———— for admission to the Bar." Each applicant must state the beginning and the end of each term spent in a law school, his age when he began his attendance upon the law school, as well as the beginning and the end of each vacation that he has had.

RULE V.

An applicant who has been admitted as an attorney in another State or country, and who has remained therein as a practicing attorney for at least three years, may prove the latter fact by his own affidavit, and must present also a certificate from a judge of the court in which he was admitted or from a county judge in said State, certifying that the applicant had remained in said State or country as a practicing attorney for said period of three years, after he had been admitted as an attorney therein. The signature of the judge must be certified to by the clerk of the court or by the county clerk under the seal of the court.

RULE VI.

The Board will divide the subjects of examination into two groups, as follows: Group One, Pleading and Practice and Evidence; Group Two, Substantive Law, viz.: Real Property, Contracts, Partnership, Negotiable Paper, Principal and Agent, Principal and Surety, Insurance, Bailments, Sales, Criminal Law, Torts, Wills and Administration, Equity, Corporations, Domestic Relations, Legal Ethics and the Constitutions of New York State and of the United States. Each applicant will be required to obtain the requisite standard in both groups and on his entire paper to entitle him to a certificate from the Board. If he obtains the required standard in either group and not on his entire paper he will receive a pass card for the group which he passes and

will not be required to be re-examined therein. He will be re-examined in the group in which he failed or on the entire paper if he failed in both groups at any subsequent examination for which he is eligible and for which he gives notice as required by these rules.

⁵⁶ NOTE.—Applicants should file their papers at the earliest possible moment; amendable defects may be discovered, which can be corrected if attended to promptly.

FORMS.

[451]

FORMS.

(Printed blank forms, the use of which is urgently recommended, can be procured from the librarians of any of the law schools in this State).

CERTIFICATE OF COMMENCEMENT OF CLERKSHIP.

(To be filed in office of Clerk of Court of Appeals. A clerkship commences only from the day it is so filed. Fee \$1.00, for filing, and certified copy to be attached to application papers.)

I (or we) do hereby certify that I am (or we are) a practicing attorney(s) of the Supreme Court of this State, and maintain an office for the transaction of law business at, and that, who is eighteen years of age, having been born at, on the, day of, has this day commenced the service of a regular clerkship in my (our) law office, aforesaid, pursuant to the rules of the Court of Appeals, for admission of attorneys and counselors-at-law.

Dated, 190..

(Signed)

.....

Attorney (s) at Law.

AFFIDAVITS TO OBTAIN ORDER FILING CERTIFICATE OF COMMENCEMENT OF CLERKSHIP NUNC PRO TUNC.

NOTE.—The rules of the Court of Appeals (Rule VI) make it the duty of attorneys with whom a clerkship shall be commenced to file a certificate of the same in the office of the Clerk of the Court of Appeals, which certificate shall, in each case, state the date of the beginning of the period of clerkship and such period shall be deemed to commence at the time of such filing, and shall be computed by the calendar year.

The rules further provide (Rule IX) that when the filing of a certificate as required by the rules has been omitted by excusable mistake or without fault, the court may order

such filing as of the proper date. A certificate of commencement of clerkship may be filed *nunc pro tunc*, upon the affidavit of the attorney showing that its filing had been omitted by excusable mistake or without fault, supplemented by the affidavit of the law clerk that he was duly qualified under the rules to begin the service of a clerkship at the date upon which it is sought to have the certificate so filed. The attorney prepares and signs a certificate of commencement of clerkship and dates it as of the day when the clerkship actually began, which certificate he procures to be filed *nunc pro tunc* as of that date. The motion is made *ex parte* by mailing the papers to the clerk.

ATTORNEY'S AFFIDAVIT.

IN COURT OF APPEALS, STATE OF NEW YORK.

| | |
|---|---|
| <p>In the Matter of the Application of for Admission to the Bar.</p> | } |
|---|---|

STATE OF NEW YORK, }
CITY AND COUNTY OF } ss.:

....., being duly sworn, deposes and says, that he is and was at and during all the times herein-after mentioned a practicing attorney of the Supreme Court of this State, maintaining a law office for the transaction of law business in the of in this State; that, the applicant above named, after the age of eighteen years commenced the service of a regular clerkship in deponent's law office aforesaid, beginning on the day of, and that he actually and *bona fide* continued to serve his regular clerkship, as aforesaid, from that date until on or about the day of

That during the entire period of such clerkship, except during the stated vacation time the said applicant was actually employed by (me) as a regular law clerk and student

in (my) law office and under (my) direction and advice engaged in the practical work of the office during the usual business hours of the day.

That deponent did not, at the time when said clerkship was commenced, as aforesaid, file or cause to be filed a certificate of the commencement thereof in the office of the Clerk of the Court of Appeals as required by the rules of said court, for the following reasons: (*Here state some act or fact of inadvertence or excusable mistake why the certificate was not so filed.*)

Deponent asks that an order be entered filing the annexed certificate of commencement of said clerkship *nunc pro tunc* as of the day of, 19..

Sworn to before me, this

day of, 190..

AFFIDAVIT OF LAW CLERK.

| | |
|---|---|
| <p>In the Matter of the Application</p> <p style="text-align: center;">of</p> <p>.....</p> <p style="text-align: center;">For Admission to the Bar.</p> | } |
|---|---|

STATE OF NEW YORK, } ss.:
CITY AND COUNTY OF

....., being duly sworn, deposes and says, that he is the applicant above named; that he is a citizen of the United States, and a resident of the State of New York and resides at, in this State.

That he is a graduate of a college (or, university), to wit, of of; that he graduated therefrom on the day of, 190.. with the degree of (or)

Deponent further states that he has had a Law Students' Certificate No., signed by the Commissioner of Education of the State of New York, as required by the rules of the Court of Appeals, heretofore issued to him, and that

the same was filed in the office of the Clerk of the Court of Appeals on the day of

Deponent further states that after the age of eighteen years he began the service of a regular clerkship in the law office of, a practicing attorney of the Supreme Court at, on the day of, 190., and that he continued the service of said clerkship from that date until on or about the day of

That during the entire period of such clerkship, except during the stated vacation time deponent was actually employed by said attorney (s) as a regular law clerk and student in (his) law office, and under (his) direction and advice, engaged in the practical work of the office during the usual business hours of the day.

That deponent did not file or cause to be filed at the time he commenced the service of his clerkship, as aforesaid, a certificate of the commencement thereof as required by the rules of the Court of Appeals.

Sworn to before me, this
day of, 190..

**ORDER FILING CERTIFICATE OF COMMENCEMENT OF
CLERKSHIP NUNC PRO TUNC.**

STATE OF NEW YORK, IN COURT OF APPEALS.

At a Court of Appeals for the State of New York, held
at the Capitol in the city of Albany, on the day
of, A. D. 19..

Present — Hon. EDGAR M. CULLEN, Chief Judge, pre-
siding.

| | |
|------------------------------------|---|
| In the Matter of the Application | } |
| of | |
| For Admission to the Bar. | |

On reading and filing the certificate and the affidavit of
....., an attorney and counselor-at-law, veri-

fied the day of, 190.., showing the time of commencement with said of a regular clerkship by the said; and the affidavit of verified the day of, 190.. On motion of, attorney for said applicant,

It is ordered that the certificate of the commencement of clerkship of the said, be and the same is hereby filed *nunc pro tunc* as of the day of, 19..

.....,
Deputy Clerk.

[L. s.]

APPLICANT'S AFFIDAVIT.

(To be filed with the Secretary of the State Board of Law Examiners, when applicant applies for examination.)

TITLE.

IN THE APPELLATE DIVISION OF THE SUPREME COURT, FOR THE JUDICIAL DEPARTMENT.

| |
|---|
| <p>In the Matter of the Application of For Admission to the Bar.</p> |
|---|

GENERAL CLAUSE.

| | |
|--------------------|--------|
| STATE OF NEW YORK, | } ss.: |
| COUNTY OF, | |
| CITY OF, | |

....., being duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the State of New York, and resides at No., in the City of, County of, in the Judicial Department; that he has resided in said Department, as

aforesaid, for the six months past, and that such residence is and was during the said six months actual and not constructive.

That he is years of age, and has not been examined for admission to practice and been refused admission and license within the four months immediately preceding this application.

That he is the applicant herein named and the person mentioned in the annexed proofs that the preliminary conditions prescribed by the rules of the Court of Appeals for the admission of attorneys and counselors-at-law have been fulfilled, and that he has studied law in the manner and according to the conditions of said rules.

FOR COLLEGE GRADUATES.

Deponent further states that he is a graduate of a college (or university), to wit, of of That he graduated therefrom on the day of, 190.., with the degree of, as will more fully appear by deponent's diploma therefrom, under the seal of said college (or university) herewith produced (or certificate of graduation under the seal of said college (or university) (hereto annexed), and marked Exhibit "...."

Deponent also annexes hereto, marked Exhibit ".....," proof that said college (or university) is registered with the University of the State of New York as maintaining a satisfactory college standing in the course leading to the degree of, with which deponent graduated, as aforesaid; (or)

Deponent further alleges on information and belief that said college (or university) is registered with the New York State Board of Law Examiners by the University of the State of New York, as maintaining a satisfactory college standard in the course leading to the degree of, with which deponent graduated therefrom as aforesaid, to entitle deponent, as the holder of said degree, to be admitted to the bar examinations after years of law study.

LAW STUDENTS CERTIFICATE.

Deponent further states that he has passed an examination conducted under the authority and in accordance with the ordinances and rules of the University of the State of New York, and has had issued to him a Law Students Certificate, No., signed by the Commissioner of Education, as required by the rules of the Court of Appeals. That deponent completed his said Regents examinations as of the date appearing upon said certificate.

That on the day of, 190., deponent filed his Law Students Certificate, as aforesaid, in the office of the Clerk of the Court of Appeals. That hereto annexed is a certified copy of the same and proof of filing, as aforesaid, marked Exhibit ""

LAW STUDENTS CERTIFICATE ON EQUIVALENTS.

Deponent further states that on the day of, 190., the University of the State of New York duly issued to deponent a Law Students Certificate, No., signed by the Commissioner of Education, as the equivalent of, and substitute for the Regents examinations prescribed by the rules of the Court of Appeals. That deponent completed the course of study on which said Law Student Certificate was issued on the date appearing upon said certificate. That on the day of, he filed his said Law Students Certificate, as aforesaid, in the office of the Clerk of the Court of Appeals. That hereto annexed is a certified copy of the same and proof of filing, as aforesaid, marked Exhibit ""

CLERKSHIP.

Deponent further states that on the day of, 190., he commenced the service of a regular clerkship in the law office of, a practicing attorney of the Supreme Court of the State of New York, at in this State. That at that time he was over the age of eighteen years, and that said on the day of, 190., filed or caused to be filed a certificate of the commencement of said clerkship in the office of the Clerk of the Court of Appeals. That a certified copy of said certificate of commencement of clerkship and proof of filing in the office of the Clerk of the Court of Appeals are hereto annexed and marked Exhibit ""

That deponent served a regular clerkship in the law office of, a practicing attorney of the Supreme Court, at in this State, after the age of eighteen years, commencing on the day of, 190.., and ending on the day of, 190..

That during the service of said clerkship deponent did not take more than two months vacation in any one year, the vacations taken by deponent began as follows, on the day of, 190.., and ended on the day of 190.., and began on the day of, 190.., and ended on the day of, 190..

Deponent further states, that during the entire period of such clerkship, except during the stated vacation time he was actually employed by said attorney (s) as a regular law clerk and student in his (their) law office (s) and under his (their) direction and advice, engaged in the practical work of the office during the usual business hours of the day.

That hereto annexed is the affidavit of the attorney with whom such clerkship was served, showing the actual service of such clerkship, the continuance and end thereof, and the beginning and end of each vacation taken by deponent during said clerkship.

**WHERE CERTIFICATE OF COMMENCEMENT OF CLERKSHIP IS
FILED NUNC PRO TUNC.**

That on the day of, the Court of Appeals duly granted an order filing deponent's certificate of commencement of clerkship, as aforesaid, in the office of the Clerk of the Court of Appeals, *nunc pro tunc* as of the day of, 190..; that hereto annexed is a certified copy of said order and proof of the entry thereof in the office of the Clerk of the Court of Appeals marked Exhibit "...."

LAW SCHOOL ATTENDANCE.

(Prior to July 1, 1907.)

Deponent further alleges that he was in regular attendance upon the law lectures and exercises of the Law School, situated at during ^{one}
^{two} school ^{three}

years of not less than eight months each, to wit, from the day of, in the year 190.., to the day of, in the year 190.., and from the day of, 190.., to the day of, 190.., and from the day of, 190.. to the day of, 190...

Deponent further alleges that he was of the age of years when he commenced his attendance upon the sessions of said school as above mentioned. The certificate of said law school given under its seal and signed by the of the Faculty (or by the of the said school), as proof of such time of study and attendance upon said law school is hereto annexed and marked Exhibit "....."

LAW SCHOOL ATTENDANCE.

(Subsequent to July 1, 1907.)

Deponent further alleges that he was in good and regular attendance upon and successfully completed the prescribed course of instruction at the Law School situate at the, during the following stated periods, to wit:

From 190.., to 190..

From 190.., to 190..

From 190.., to 190..

(and received the degree of) or (is a graduate of said Law School.*)

Deponent further states, that the school year of said Law school begins on the day of, and ends on the day of, next succeeding (and consists of not less than thirty-two school weeks, exclusive of vacations, in which not less than three hundred and eighty-four hours of attendance upon law lectures or recitations of the prescribed course of instruction of said law school, which are given or conducted by regular members of the faculty, are required of each student),† as will more fully appear

* Erase, if the law school degree was not received or applicant did not graduate.

† If the applicant matriculated at the law school prior to July 1, 1907, he may erase, if necessary, that portion of the affidavit referring to the length of the school year and to the number of hours of attendance upon law lectures and recitations required, contained within the brackets.

by the certificate of said law school given under its seal and signed by the of the Faculty (or by the of said school) hereto annexed and marked Exhibit " "

Deponent further alleges that he was of the age of years when he commenced his attendance upon the sessions of said law school as aforesaid.

LAW SCHOOL ATTENDANCE.

(Rules in effect July 1, 1911.)

Deponent further alleges that he was in good and regular attendance upon and took and successfully completed the prescribed course of instruction required at the Law School situate in the for the degree of Bachelor of Laws, during the following stated periods, to wit:

From 191.., to 191..

From 191.., to 191..

From 191.., to 191..

(and received the degree of Bachelor of Laws of said law school.*)

Deponent further states that the above named Law School prescribes that its students shall take the course of instruction required at said Law School for the degree of Bachelor of Laws granted by it.

Deponent further states that he *bona fide* took and successfully passed all examinations in all the subjects required for the granting of the degree of Bachelor of Laws at said Law School given during such periods of attendance, he having bona fide taken and successfully passed examinations in the following subjects required for the granting of the said degree of Bachelor of Laws at said Law School as aforesaid, to wit.:

* Erase if the degree of Bachelor of Laws was not received.

First Year

 Second Year

 Third Year

Deponent further states, that the school year of said Law School begins on the day of and ends on the of next ensuing, and consists of not less than thirty-two school weeks, exclusive of vacations, in which not less than ten hours of attendance upon law lectures or recitations of such prescribed course to be given or conducted by regular members of the faculty are required in each week, as will more fully appear by the certificate of said Law School given under its seal and signed by the of the Faculty (or by the of said school) hereto annexed and marked Exhibit "...."

Deponent further alleges that he was of the age of years when he began his attendance at said Law School.

.....

FOR ATTORNEY OF ANOTHER STATE.

(Rule III. Rules, Court of Appeals. Rule V. State Board of Law Examiners.)

Deponent further states that he was duly admitted as an attorney in the Court of the State of, on the day of, 190., and that he remained in said State as a practicing attorney for the period of three years, viz., from the day of to the day of, at, in said State, where he remained and maintained an office for the transaction of law business in that State. That hereto annexed is deponent's license or certificate of admission to the bar of said State of, executed by the proper authorities, marked Exhibit "....," and a certificate from the Honorable, a Judge of the Court in which deponent was admitted to practice as aforesaid (or from a County Judge of said State), certifying that deponent had remained in said State of

..... at aforesaid as a practicing attorney for said period of three years after he had been admitted as a practicing attorney therein.

That the signature of the said Judge is certified to by the Clerk of the Court (or by the County Clerk) under the seal of the Court, as appears by this certificate thereof hereto annexed marked Exhibit "...."

.....

Sworn to before me, this

day of, 190...

.....

.....

ATTORNEY'S AFFIDAVIT.

(To accompany applicant's proofs, when necessary.)

IN THE APPELLATE DIVISION OF THE SUPREME COURT, FOR THE JUDICIAL DEPARTMENT.

In the Matter of the Application

.....

of

.....

For Admission to the Bar.

STATE OF NEW YORK,

COUNTY OF

City of,

} ss.:

....., being duly sworn, deposes and says:

That he is and was at and during all the times herein mentioned a practicing attorney of the Supreme Court of this State, maintaining a law office for the transaction of law business in the of in this State.

That, the applicant above-named, after the age of eighteen years, served a regular clerkship in deponent's law office, as aforesaid, beginning on the

day of, 190., and ending on the day of, 190...

That during the service of said clerkship not more than two months vacation was taken in any one year by the said, the beginning and end of each vacation taken by him being as follows, viz., from the day of in the year 190.. to the day of in the year 190...

Deponent further states, that during the entire period of such clerkship, except during the stated vacation time said applicant was actually employed by deponent (or deponents said form) as a regular law clerk and student in his (their) law office (s) and under his (their) direction and advice, engaged in the practical work of the office during the usual business hours of the day.

Sworn to before me, this

day of, 190...

.....

.....

CERTIFICATE OF LAW SCHOOL.

(For time subsequent to July 1, 1907.)

Name of Law School Here.

This is to certify that of was in good and regular attendance upon and successfully completed the prescribed course of instruction at the above named Law School during the following stated periods, to wit:

from 190.. to 190..;

from 190.. to 190..;

from 190.. to 190..;

and that he received from said Law School the degree of (or) he was duly graduated from said Law School.*

* Erase, if the law school degree was not received or applicant did not graduate.

It is further certified that the school year of said Law School begins on the day of and ends on the day of next succeeding in each year, (and consists of not less than thirty-two school weeks, exclusive of vacations, in which not less than three hundred and eighty-four hours of attendance upon law lectures or recitations of the prescribed course of instruction of said Law School, which are given or conducted by regular members of the Faculty, are required of each student).*

Witness my hand and seal of said Law School at this day of 190...

(SEAL)

.....,

Dean.

(or other officer or teacher authorized to sign.)

CERTIFICATE OF LAW SCHOOL.

(Rules in effect July 1, 1911.)

Name of Law School Here.

This is to certify that of was in good and regular attendance upon and took and successfully completed the prescribed course of instruction required at the above named Law School for the degree of Bachelor of Laws, during the following stated periods, to wit.:

from 191.. to 191..;

from 191.. to 191..;

from 191.. to 191..;

(and that he received the degree of Bachelor of Laws at said school).†

It is further certified that the above Law School prescribes that its students shall take the course of instruction required

* If the student matriculated at the law school prior to July 1, 1907, and the school has not yet conformed to the above requirements, as to such students, that portion of the last paragraph of the certificate, included within the brackets, may be omitted.

† Erase, if degree was not received.

at said school for the degree of Bachelor of Laws granted by it.

It is further certified that the above-named bona fide took and successfully passed all examinations in all subjects required for the granting of the degree of Bachelor of Laws by said Law School which were given during the aforesaid periods of attendance; the said having bona fide taken and successfully passed examinations in the following subjects required for the granting of the degree of Bachelor of Laws at said Law School, to wit:

First year

 Second year

 Third year

It is further certified that the school year of said law school begins on the day of and ends on the day of, next ensuing, and consists of not less than thirty-two school weeks, exclusive of vacations, in which not less than ten hours of attendance upon law lectures or recitations of such prescribed course, to be given or conducted by regular members of the faculty, are required in each week.

Witness my hand and the seal of the said Law School at, this day of, 191...

(SEAL)

.....,
 Dean.

(or other officer or teacher authorized to sign.)

AFFIDAVIT OF GOOD MORAL CHARACTER.

IN THE APPELLATE DIVISION OF THE SUPREME COURT FOR THE JUDICIAL DEPARTMENT.

In the Matter of the Application

of

.....

For Admission to the Bar.

STATE OF NEW YORK, }
COUNTY OF, } ss.:
CITY OF, }

..... being duly sworn deposes and says that he is a practicing attorney of the Supreme Court of the State of New York, and resides at and that he is acquainted with and has known, the above-named applicant, who also resides at in the same judicial district with deponent, for years last past, and that he is to the knowledge of deponent a person of such good character and general fitness as justifies his admission to practice as an attorney and counselor at law, in the Courts of Record in this State.

The facts upon which my knowledge of said applicant, as aforesaid, is based are as follows: (*State in detail the facts and the acquaintance with the applicant which justifies the opinion expressed.*)

(Signed.)

Sworn to before me, this
day of, 191...

AFFIDAVIT FOR RE-EXAMINATION.

**IN THE APPELLATE DIVISION OF THE SUPREME
COURT OF THE STATE OF NEW YORK, FOR
THE JUDICIAL DEPARTMENT.**

| |
|--|
| <p>In the Matter of the Application of For Admission to the Bar.</p> |
|--|

STATE OF NEW YORK, }
COUNTY OF, } ss.:
CITY OF, }

....., being duly sworn, deposes and says, that he is the applicant above named. That he is and has been for the six months immediately prior to the date of the examination for admission to the Bar for which he now makes application an actual and not a constructive resident of this State, having actually resided for said six months at No. 575 in the of in the Judicial Department.

Deponent further says, that he has not been examined for admission to practice and been refused admission and license within four months immediately preceding the date of said examination.

Sworn to before me, this
day of, 191..

REGISTRATION OATH.

(To be Filed in the Office of the Clerk of the Court of Appeals After Admission and Before practicing. Fee, 25 cents.

IN COURT OF APPEALS — STATE OF NEW YORK.

| | |
|--|---|
| <p>In the Matter of the Registration of As an Attorney and Counselor-at-Law.</p> | } |
|--|---|

| | |
|---|---|
| <p>STATE OF NEW YORK, COUNTY OF, City of,</p> | } |
|---|---|

I,, being duly sworn, *affirmed*, (a) do depose and say:

That I am a natural born citizen of the United States, *naturalized citizen of the United States, having been duly naturalized at a Term of the Court of, held at, in the City of, on or about the day of, 18..*; that I now reside at No. Street, in the of, New York, *in the State of, and have an office for the transaction of law business at No., in the of within this State* (b).

That I was duly and regularly licensed and admitted to practice as an attorney and counselor-at-law, *an attorney-at-law*, in the Courts of Record of this State, at the Term, 19.., of the General Term, *Appellate Division*, of the Supreme Court of this State, *or* (c).

.....
.....
.....
.....
.....
.....

held at the of, in this State, and
that I took the Constitutional oath of office (*d*).

Subscribed and sworn, *affirmed before me*,
this day of, 189..

(*a*) Erase words in italics, if not necessary.

(*b*) Section 470, Judiciary Law, Law 1909, chap. 35.

(*c*) "Or other Court, as the case may be." Persons who were solicitors in chancery or attorneys of or in the Supreme Court on the first Monday of July, 1847, *Vide* Judiciary Law, sec. 468.

(*d*) Oath must be "substantially" in the above form, the blanks being properly filled (*id*).

As to the requirement as to stating that the affiant took the constitutional oath, *vide* sec. 468, same act.

REGISTERED COLLEGES.

Graduates of the colleges or universities hereinafter named, with any of the degrees mentioned, need not attach to their application papers, Regents' college registration certificates. All others must as heretofore.

- Adelphi College, Brooklyn, N. Y.: B. A.
- Alfred University, Alfred, N. Y.: B. A., Ph. B., B. S.
- Amherst College, Amherst, Mass.: B. A., B. S.
- Barnard College, New York, N. Y.: B. A., B. S.
- Bates College, Lewiston, Me.: B. A.
- Bowdoin College, Brunswick, Me.: B. A.
- Brown University, Providence, R. I.: B. A., Ph. B.
- Bryn Mawr College, Byrn Mawr, Pa.: B. A.
- Bucknell University, Lewisburg, Pa.: B. A., Ph. B., B. S.
- Canisius College, Buffalo, N. Y.: B. A.
- Catholic University of America, Washington, D. C.: B. A.
- Central Wesleyan College, Warrentown, Mo.: B. A., Ph. B., B. L., B. S.
- Clark College, Worcester, Mass.: B. A.
- Colgate University, Hamilton, N. Y.: B. A., B. S.
- College of St. Elizabeth, Convent Station, N. J.: B. A.
- College of St. Francis Xavier, New York: B. A.
- College of St. Thomas of Villanova, Pa.: B. A.
- College of the City of New York, New York: B. A., B. S.
- Columbia University, New York: B. A., B. S., E. M., Met. E., C. E., B. E., Mech. E., B. S. in Arch.
- Cornell University, Ithaca, N. Y.: B. A., C. E., M. E., B. Arch.
- Dalhousie College and University, Halifax, N. S.: B. A., B. S.
- Dartmouth College, Hanover, N. H.: B. A., B. S., C. E.
- Davidson College, Davidson, N. C.: B. A., B. S.
- Delaware College, Newark, Del.: B. A.
- Denison University, Granville, O.: B. A., Ph. B., B. S.
- Dickinson College, Carlisle, Pa.: B. A., Ph. B., B. S.
- Drake University, Des Moines, Ia.: B. A., Ph. B., B. S.
- Duquesne College, Pittsburg, Pa.: B. A.
- Earlham College, Richmond, Ind.: B. A., B. S.

- Elizabeth College, Charlotte, N. C.: B. A.
 Elmira College, Elmira, N. Y.: B. A., B. S.
 Fordham University, New York: B. A., B. S.
 Franklin College, Franklin, Ind.: B. A., Ph. B., B. S.
 Georgetown University, Washington, D. C.: B. A.
 Greenville College, Greenville, Ill.: B. A., Ph. B.
 Hamilton College, Clinton, N. Y.: B. A., Ph. B., B. S.
 Harvard University, Cambridge, Mass.: B. A.
 Haverford College, Haverford, Pa.: B. A., B. S.
 Hobart College, Geneva, N. Y.: B. A., Ph. B., B. S.
 Holy Cross College, Worcester, Mass.: B. A.
 Hope College, Holland, Mich.: B. A.
 Howard University, Washington, D. C.: B. A.
 James Millikin University, Decatur, Ill.: B. A.
 Johns Hopkins University, Baltimore, Md.: B. A.
 Kenyon College, Gambier, O.: B. A., Ph. B., B. S.
 Keuka College, Keuka, N. Y.: B. A., B. S.
 Knox College, Galesburg, Ill.: B. A., B. L., B. S.
 Lafayette College, Easton, Pa.: B. A. Ph. B., B. S.
 Lake Erie College, Painesville, O.: B. A., B. L., B. S.
 Lawrence Scientific School, Cambridge, Mass.: B. S.
 Lehigh University, South Bethlehem, Pa.: B. A.
 Leland Stanford Jr. University, Stanford University,
 Cal.: B. A.
 Louisiana State University, Baton Rouge, La.: B. A., Lat.
 sci. or Lit.
 Loyola College, Baltimore, Md.: B. A.
 McMaster University, Toronto, Ont., Can.: B. A.
 Manhattan College, New York: B. A. B. S. in C. E.,
 'Arch., Naval Arch.
 Massachusetts Institute of Technology, Boston, Mass.:
 B. S.
 Miami University, Oxford, O.: B. A.
 Mount St. Mary's College, Emmitsburg, Md.: B. A.
 Muskingum College, New Concord, O.: B. A., B. S.
 New Windsor College, New Windsor, Ind.: B. A., B. S.
 New York University, New York: B. A., B. S., B. S. in
 C. E., M. E., Chem. E.
 Niagara University, Niagara, N. Y.: B. A.

- Northwestern College, Naperville, Ill.: B. A., Ph. B., B. A.
- Norwegian Luther College, Decorah, Ia.: B. A.
- Occidental College, Los Angeles, Cal.: B. A., B. L., B. S.
- Ohio State University, Columbus, O.: B. A.
- Olivet College, Olivet, Mich.: B. A., Ph. B., B. L., B. S.
- Park College, Parkville, Mo.: B. A.
- Pennsylvania State College, State College, Pa.: B. A., B. S.
- Polytechnic Institute of Brooklyn, N. Y.: B. S. in Chem., C. E., E. E., M. E.
- Princeton University, Princeton, N. J.: B. A., B. L., B. S., C. E.
- Randolph-Macon College, Ashland, Va.: B. A.
- Randolph-Macon Woman's College, Lynchburg, Va.: B. A.
- Rutgers College, New Brunswick, N. J.: B. A., B. L.
- St. John's College, Brooklyn, N. Y.: B. A.
- St. John's University, Collegeville, Minn.: B. A.
- St. Joseph's College, Philadelphia, Pa.: B. A.
- St. Lawrence University, Canton, N. Y.: B. A., B. S.
- St. Stephen's College, Annandale, N. Y.: B. A.
- Seton Hall College, South Orange, N. J.: B. A., B. S.
- Shaw University, Raleigh, N. C.: B. A., B. S.
- Sheffield Scientific School, New Haven, Ct.: Ph. B.
- Smith College, Northampton, Mass.: B. A., B. L., B. S.
- State University of Oklahoma, Norman, Okla.: B. A., Engineering.
- Syracuse University, Syracuse, N. Y.: B. A., Ph. B., B. L., B. S., C. E., E. E., M. E., B. Arch.
- Taylor University, Upland, Ind.: B. A., Ph. B., B. L., B. S.
- Trinity College, Hartford, Ct.: B. A., B. L., B. S. in L. and S.
- Trinity College, Toronto, Ont., Can.: B. A.
- Tufts College, Tufts College, Mass.: B. A., B. S., B. Ch. E., C. E., E. E., Mech. E.
- Union University, Schenectady, N. Y.: B. A., Ph. B., B. S., B. E.

University College, Toronto University, Toronto, Ont.,
Can.: B. A.

University of Arizona, Tucson, Ariz.: B. S., Ph. B.

University of California, Berkeley, Cal.: B. A., B. L.

University of Chattanooga, Chattanooga, Tenn.: B. A.,
B. L., B. S.

University of Chicago, Chicago, Ill.: B. A., Ph. B., B. S.

University of Illinois, Champaign, Ill.: B. A.

University of Kansas, Lawrence, Kan.: B. A.

University of Maine, Orono, Me.: B. A., B. S., B. S. in E.

University of Michigan, Ann Arbor, Mich.: B. A., B. S.
in C. E., M. E., E. E., Chem. E., Marine E.

University of Minnesota, Minneapolis, Minn.: B. A.

University of Missouri, Columbia, Mo.: B. A.

University of Notre Dame, Notre Dame, Ind.: B. A., Ph.
B., B. L., B. S.

University of Ottawa, Ottawa, Ont., Can.: B. A., Ph. B.

University of Pennsylvania, Philadelphia, Pa.: B. A., B.
S. (general), B. S. in Econ., Chem., Arch., C. E., Chem. E.,
Mech. E., E. E., Biol.

University of Rochester, Rochester, N. Y.: B. A., Ph. B.,
B. S.

University of Vermont, Burlington, Vt.: B. A., Ph. B.,
B. S. in Com. & Econ., C. E., E. E., M. E., Chem.

Vassar College, Poughkeepsie, N. Y.: B. A.

Victoria College, Toronto, Ont., Can.: B. A.

Virginia Military Institute, Lexington, Va.: M. S., C. E.
on one year's residence.

Wells College, Aurora, N. Y.: B. A.

Wesleyan University, Middletown, Ct.: B. A., Ph B.,
B. S.

Westminster College, New Wilmington, Pa.: B. A., B.
S. including philosophy & science.

West Virginia University, Morgantown, W. Va.: B. A.,
B. S., C. E.

Williams College, Williamstown, Mass.: B. A.

Woman's College, Baltimore, Md.: B. A.

Yale University, New Haven, Ct.: B. A.

COURSES OF STUDY FOR LAW CLERKS.

[A paper read by FRANKLIN M. DANAHER before the Section of Legal Education of the American Bar Association, at Saratoga Springs, N. Y., August 29, 1902.]

Because of the limited time and space allotted to us, we must be brief, and therefore will leave unsaid much that is relevant to our discourse on the general subject of legal education, its paramount importance to the public as well as to the profession, its history and development, its present needs and future requirements. The American Bar Association through its Section of Legal Education is doing good work in advancing the cause of higher education at the bar, and much of the marked improvement therein and the general raising of the standards for admission thereto are due to its intelligent propaganda. An examination of its reports, however, demonstrates that those who shape its policies, read its papers, and give direction to its debates, devote their time and talents almost, if not exclusively, to the establishment and improvement of law school methods, and pay but slight, if any, attention to the legal education of the law clerks who cannot, by reason of their environment, attend upon a law school. This omission is due to the fact that the majority of those who endeavor to raise the standing of the profession by educating its members are teachers in law schools, and because the average practitioner has neither the time nor the learning to devote to the subject. Whatever may be the cause, the important matter of the education of the law clerk in the science of the law appears to be totally neglected, and it will be our present endeavor, although an "average practitioner," to remedy that neglect, with the assistance of the aforesaid professors of the law.

We believe that those law clerks now studying to be

lawyers, whose circumstances prevent their attendance upon a law school, are thereby handicapped and are too numerous and will constitute too great a proportion of the bar of the future to be educationally neglected by those who are constantly evolving new methods of imparting legal knowledge to the students of the universities. The highest interests of the State, as well as the good of the profession, demand that some endeavor be made to aid them in their struggle, and because of it the New York State Board of Law Examiners, through the altruistic kindness of the law faculties of those great centers of legal education, Cornell, Yale, Pennsylvania and the New York Law School, is permitted to offer to the law clerks of the United States courses of law study based upon scientific method, which can be followed in the office, wherein are presented the subjects of study, the books to be read thereon, and the order of their reading, to the end that they may enter upon the practice of their profession on an equality with the law school graduates, with some knowledge of the scientific side of the law, and better fitted to take upon themselves its duties and responsibilities.

In offering these courses of study the Board must not be understood as in any way depreciating or underrating the necessity of a law school education. In a paper read by the writer before the New York State Bar Association, at its annual meeting held in the city of Albany in 1897 (Reports New York State Bar Association, vol. 20, p. 105), speaking of the necessity of law school training for applicants for admission to the bar, we said:

“Observation shows that under modern conditions existing in the profession, an education in law cannot be procured exclusively in a law office, and that those who have had the benefit of a law school training are better equipped to enter upon their careers and are more likely to succeed therein than those who come to the bar through an office. The reasons for this are many and obvious. The law clerk of to-day has not the advantages nor the opportunities of his predecessor of even twenty years ago. The methods of office work have been revolutionized in that time. The days when we, as clerks, laboriously made five, ten or fifteen

copies of a complaint in a foreclosure or partition, or copied and triplicated, by pen, orders and complaints and answers, at law and in equity, and unconsciously absorbed the form and substance of what we were doing and learned the language of the law, have given way to the days of the stenographer and typewriter. Law papers and briefs are now dictated by the attorney to the office stenographer, manifolded by machinery and sent out in many instances without the knowledge on the part of the clerk that any such were ever in existence. In many offices clerks follow specialties and learn nothing else, and, paradoxical as it may seem, the more business an office has the less are the educational opportunities of the clerk." * * *

"How many lawyers, with students in their offices, know or care what the latter are reading or if they study at all? Their reading was not directed in their student days, and they see no reason why that of the present aspirants should be, forgetting entirely the differences in existing conditions at the bar and the vast number of better equipped competitors with his clerk, that the law schools are yearly turning out." * * *

"The chances are equal, if the lawyer cared, that he would not know how to direct or construct a well considered and progressive course of law reading, covering a period of two years or more; so beyond telling him to commence on Blackstone, through many obsolete pages of which his clerk will unnecessarily wade, and then to read Kent, he lets him proceed at his own sweet will and pleasure to the destruction of all method, the waste of much valuable time, and the consequent loss of much needed knowledge." * * *

"Members of the bar of the future to succeed must have a scientific, well directed and comprehensive training in a law school. The fact that many of the lawyers of to-day did not have that advantage and still succeeded is no reason why the future will not demand it. There is so much to be studied, and so much more that cannot be studied for want of time; there are so many books that must be read, and so many more that can be dispensed with; there are so many cases to be considered, rules to learn, and excep-

tions to know, that unless the law student puts himself under the guidance of some one learned in the art of directing law study, he will float at the mercy of every varying wind and tide, upon an ocean of knowledge, without rudder or compass and become unfit to make the voyage of life in his chosen profession."

Hon. William P. Goodelle, the President of our Board, in his remarks at the conference of State Boards of Bar Examiners, held in connection with the Section of Legal Education of the American Bar Association, at Saratoga Springs, N. Y., in 1898 (Reports American Bar Association, vol. 21, p. 533), speaking on the same subject, said:

"While many who have not had law school advantages succeed in passing our examinations, they find it exceedingly difficult. The law offices of this State, with typewriters and stenographers doing the work of students in earlier days, with little or no attention paid to them or to their course of study by those who should be their legal preceptors, furnish very inadequate advantages to the ordinary student, and he is an exceptionally good man who can go into a law office and so, unaided, fit himself to pass an examination.

"The student has learned that it is the thorough drill and systematic study of the law school that he needs and desires, to satisfactorily qualify himself in the law; and compelled by a somewhat seeming necessity, coupled with such desire, the tendency is toward the law schools; and the growing appreciation of a law school course will, in my judgment, result before many years in the Court of Appeals requiring by its rules that some portion, at least, of a legal course of study (in New York) shall be had in a law school."

The Board is convinced from its abundant experience, that law clerks are not as well equipped in the beginning of their practice and do not know as much law as the graduates of the schools. Its records show that out of every one hundred applying for examination for admission to the bar, who have not had the benefit of a carefully considered and scientific course in a law school, twenty-two fail, and but twelve fail who have had law school training, and the probabilities of future pro-

professional success are about in the same proportion. It knows that a curriculum for law clerks is a crying need, from the many requests made for the same, and from the statements repeatedly made to its members by the law clerks, who spent their last year of study in attendance upon a law school, that that which struck them most forcibly and regretfully, after they had been there for a few months, was the valuable time they had lost during their clerkship in the study of the law, not from lack of time or of industry, but from want of method and of direction in how, and what, and when to read.

The Board recommends a person, who intends to become a lawyer, to first enter a law school and thereafter complete his legal education by serving a clerkship in a law office.

Unless the student has studied the law as a science, he cannot, even in a law office, without loss of valuable time, and much unnecessary labor, learn to apply it practically with benefit to himself and his client.

We believe that one who serves a law clerkship of a year after two years of attendance upon a law school, will learn more of practice and procedure and learn it better in that year than he would in three years clerkship without law school experience, and be a much better lawyer in addition.

The number of law books and their yearly increase is appalling, and is also a most important factor in the great problem of education in the law. Mr. Stephen D. Griswold, the law librarian of the New York Law Library, at Albany, writes to us, that in 1901 there were two hundred and thirty volumes of law reports published in English, containing about one hundred and sixty-one thousand pages, of which New York State alone contributed about nineteen thousand pages. That does not include text-books, encyclopedias, reprint series of reports, nor the law magazines. All those pages in a single year; every line a danger, every word a trap, even the punctuation a snare! Think of what has heretofore been published, and even though he shuts his eyes to the deluge which the future will bring forth, does the average law clerk imagine that he can, without the direction of a properly trained instructor in the law, know what to study, and what not to study, out of that vast mass of undigested matter?

It would be a waste of time for us to endeavor to establish the proposition that a law clerk cannot combine within himself nor find in his law office all the advantages of a university, and we will not make the attempt.

We will be content, if but a portion of the good accomplished by the preparation of this paper, consists in forcing into law schools those indifferent law clerks who can, but will not, either through ignorance or laziness, enter the same, to properly prepare themselves for their future professional life. Concerning such, we feel at times, quite in the frame of mind of Prof. James Barr Ames, of the faculty of the Law School of Harvard University, who wrote to us that it seemed to him undesirable to encourage men who cannot have the benefit of law school training, but propose to practice law, by providing a curriculum for them alone. We were convinced, however, that it was very essential that some educational aid should be given to those who must come to the bar through the office, and we appealed to the law faculties hereinbefore named, to provide courses of study for them, with the admirable results hereinafter presented.

The responses were prompt and generous. They show a kind and most commendable disposition and an earnest endeavor to aid those who are endeavoring under adverse conditions to fit themselves through office study alone for the law, and convince us that they have been overlooked rather than deemed unworthy of consideration, by the leaders in the present movement toward higher education at the bar. The courses of study submitted are not ideal, nor do they possess academic perfection; their authors intended that they should not, but for the purposes for which they were created, they are complete and comprehensive. They represent years of valuable work and experience in the art of teaching law, and are mines full of treasure for faithful and diligent law clerks. Each is up to date, properly balanced, and scientifically arranged by its authors, but it must be distinctly understood that neither is as good nor as efficient in results, as could be obtained by personal attendance upon the exercises and lectures of the schools.

CORNELL UNIVERSITY.

ITHACA, N. Y.

PROPOSED OUTLINE OF STUDY FOR STUDENTS IN LAW OFFICES.

Prepared by the Faculty of Cornell University College of Law.

A.

SUBSTANTIVE LAW.

The studies in Procedure should begin with the studies in Substantive Law and be continued throughout the whole period of study.

Wherever statutes are indicated, they are the New York statutes. Students in other States must seek assistance as to statutory references from practitioners or teachers in their States.

I. Elementary Law.

Woodruff's Introduction to the Study of Law.

Robinson's Elementary Law, with collateral readings in Blackstone (Chase's Ed.) and Kent.

II. Contract and Agency.

Anson on Contract (Huffcut's Ed.), with study of Huffcut and Woodruff's American Cases on Contract (2d Ed.); or Clark or Harriman (2d Ed.) on Contract.

Huffcut on Agency (2d Ed.), Book I, with Huffcut's Cases on Agency.

III. Torts (including Master and Servant).

Bigelow on Torts (7th Ed.), with Bigelow's Cases on Torts.

New York Code of Civil Procedure, §§ 1899-1908 and cases thereunder.

Huffcut on Agency (2d Ed.), Book II.

IV. Domestic Relations and Law of Persons.

Tiffany on Domestic Relations, with
Woodruff's Cases on Domestic Relations and Law
of Persons.

New York Domestic Relations Law.

New York Code Civil Procedure, §§ 1742-1774.

V. Crimes and Criminal Procedure.

Clark and Marshall on Criminal Law, with Beale's
Cases on Criminal Law, or

May on Criminal Law, with Chaplin's Cases on
Criminal Law.

Beale's Criminal Pleading and Practice.

New York Penal Code and Code of Criminal Pro-
cedure.

VI. The Law of Property.

1. Real Property.

Tiffany on Real Property, or Hopkins on
Real Property, or Tiedeman on Real
Property.

Finch's Cases on the Law of Property in
Land.

Fowler's Real Property Law of New York.

2. Personal Property, Including Sales.

Brantly on Personal Property, with vol. I
of Gray's Cases on Property, pp. 1-384.

Fowler's Personal Property Law of New
York.

Tiffany on Sales, or

F. M. Burdick on Sales, with F. M. Bur-
dick's Cases on Sales.

Mecham on Sales (2 vols.), and Bennett's
Ed. (1899) of Benjamin on Sales, are
valuable for reference or study.

VI. Wills and Administrations.

Chaplin on Wills, with Page on Wills, for collat-
eral reading.

VII. Wills and Administrations — continued.

Croswell on Executors and Administrators (1897).
New York Code of Civil Procedure, §§ 1814-1870
and 2472-2860.

New York Revised Statutes, Part II, ch. VI,
title I.

(a) Art. 1, § 1 (as am. by L. 1867, ch. 782),
2-5.

(b) Art. 2, § 21 (as am. by L. 1867, ch. 782),
22.

(c) Art. 3, §§ 40-48, 49 (as am. by L. 1869,
ch. 22), 50-53, 69-71.

New York Revised Statutes, Part II, ch. VII, title
III, §§ 67-70.

New York Laws.

L. 1853, ch. 238, § 1 (as am. by L. 1879,
ch. 316).

L. 1860, ch. 360, §§ 1 and 2.

L. 1865, ch. 368, § 6.

L. 1867, ch. 782, §§ 2, 5, 13 (as am. by L.
1887, ch. 630), 14.

L. 1875, ch. 267, § 7.

L. 1875, ch. 343, § 5.

L. 1887, ch. 317, § 7.

VIII. Equity Jurisdiction.

Bispham on Equity (6th Ed.) or
Eaton on Equity.

IX. Special Contract Subjects.

1. Bailments and Carriers.

Browne's, or Lawson's, or Hale's texts, with
McClain's Cases on Carriers, and article II
of the New York Railroad Law.

2. Insurance.

Richards on Insurance, with Woodruff's
Cases on Insurance; and §§ 55, 57, 92,
121, 211, 238, 266, of the New York In-
surance Law.

IX. Special Contract Subjects — continued.

3. Negotiable Instruments.

Bigelow's Bills, Notes and Cheques (2d Ed.).

Huffcut's Negotiable Instruments.

X. The Law of Association.

1. Partnership.

Burdick on Partnership, with Burdick's Cases.

New York Partnership Law.

2. Joint-Stock Companies.

New York Joint Stock Association Law.

3. Private Corporations.

Taylor or Clark on Corporations, with Smith's or Keener's Cases on Corporations.

New York General Corporation Law.

New York Stock Corporation Law.

New York Business Corporation Law.

New York Code Civil Procedure, §§ 1775-1813, 3357-3397.

4. Public Corporations.

Dillon on Municipal Corporations, or Smith's Cases on Public Corporations.

XI. Constitutional Law.

Cooley's Principles of Constitutional Law, with McClain's Cases on Constitutional Law.

United States Constitution.

New York Constitution.

B.

CIVIL PROCEDURE AND EVIDENCE.

(NOTE.—The study of Procedure should begin at the same time as the study of the Substantive Law, and be continued throughout the whole period of study.)

I. Civil Procedure.

1. Introductory.

Bryant's Code Pleading.

I. Civil Procedure — continued.

2. Courts.

New York Constitution, art. VI.
New York Code Civil Procedure, §§ 1-103,
190-198, 217-262, 340-361.

3. Limitations.

New York Code Civil Procedure, §§ 362-
415.

4. Commencement of Actions.

New York Code Civil Procedure, §§ 416-
477.

5. Pleadings.

New York Code Civil Procedure, §§ 478-
546.
Bliss, Code Pleading.

6. Interlocutory Proceedings.

New York Code Civil Procedure, §§ 548-
827.

7. Trials.

New York Code Civil Procedure, §§ 963-
991, 1008-1026, 1163-1189.

8. Judgments and the Enforcement Thereof.

New York Code Civil Procedure, §§ 1200-
1281, 1932-1941, 1362-1495, 2432-
2471, 1871-1879.

9. Special Provisions as to Property Actions.

New York Code Civil Procedure, §§ 1496-
1741.

10. Foreclosure by Advertisement.

New York Code Civil Procedure, §§ 2861-
3158, 2231-2265.

11. Actions in Justices' Courts.

New York Code Civil Procedure, §§ 2861-
3158, 2231-2265.

I. Civil Procedure — continued.

12. State Writs.

New York Code Civil Procedure, §§ 1991-2102.

13. Vacating Judgments.

New York Code Civil Procedure, §§ 1282-1292.

14. Exceptions; Motion for New Trial.

New York Code Civil Procedure, §§ 992-1007.

15. Appeals.

New York Code Civil Procedure, §§ 1293-1361.

16. Certiorari.

New York Code Civil Procedure, §§ 2120-2148.

II. Evidence.

Stephen's Digest (Chase's 2d ed.), or

Greenleaf on Evidence, vol. 1 (Wigmore's ed.)

Thayer's Cases on Evidence.

New York Code Civil Procedure, Index "Evidence."

YALE UNIVERSITY.

NEW HAVEN, CONN.

A COURSE OF READING IN LAW WHICH THE FACULTY OF THE LAW DEPARTMENT OF YALE UNIVERSITY APPROVE AND WHICH IT IS ASSUMED WILL REQUIRE THE STUDENT'S CAREFUL ATTENTION DURING A PERIOD OF AT LEAST THREE YEARS.

The exact order in which legal studies should be pursued is as respects some topics more or less arbitrary. As respects others it is a matter of no little importance, and one which cannot be disregarded, if the best results are to be attained. The matter is of much more importance to those studying alone in offices than to those who have the aid of instructors in the Law Schools.

The course of study which we have outlined is not in all respects that which is followed in the Yale Law School. A course prescribed for students in schools generally needs modification for those who cannot have the assistance which the schools afford.

The student may begin his legal study with **ROBINSON'S ELEMENTARY LAW**, which should be read in connection with **BLACKSTONE'S COMMENTARIES**, consulting at the same time such other works cited by Professor Robinson as the student has access to in the office in which he reads. He should read the Preface to the work on Elementary Law and carefully conform to its directions. The study of **CRIMINAL LAW** may next engage his attention, and **CLARK'S** or **MAY'S** work on this subject be read. This may be followed by **COOLEY** or **BIGELOW ON TORTS**.

He may then pass to the subject of **CONTRACTS**, and it is advised to read **HUFFCUT'S EDITION OF ANSON'S LAW OF**

CONTRACT, and follow it with **CLARK'S CONTRACTS**, **HUFFCUT'S AGENCY**, **LAWSON'S BAILMENTS**, and **SCHOULER'S DOMESTIC RELATIONS** may next be read in the order named.

Thereafter the law of **PROPERTY** may be taken up. The student is recommended first to read **DARLINGTON ON PERSONAL PROPERTY**, and then **TIEDEMAN ON REAL PROPERTY**.

By this time he ought to be in a position to understand the bearing of methods of **PROCEDURE** upon the development as well as the enforcement of common law rights, and we should advise his turning his attention to **ADJECTIVE LAW** so far as to acquaint himself with the main rules of pleading and evidence in civil actions. He should now carefully study the first volume of **GREENLEAF'S EVIDENCE**; then **HEARD'S CIVIL PLEADING**, following it with **BRYANT'S CODE PLEADING**.

The subject of **EQUITY** should next be taken up, and he may use first the work either of **BISPHAM**, **EATON** or **MERWIN**, and then **PATERBAUGH ON PLEADING AND PRACTICE IN EQUITY**.

This may be followed by a work on **NEGOTIABLE PAPER**. **BIGELOW ON BILLS AND NOTES**, or **NORTON ON BILLS AND NOTES** (3d Edition), or **HUFFCUT'S CASES ON NEGOTIABLE INSTRUMENTS** may be read.

In conclusion of these preliminary studies, the student is advised to read, in the order named: **LINDLEY** or **PARSONS ON PARTNERSHIP**; **MORAWETZ**, **TAYLOR**, or **ELLIOTT ON PRIVATE CORPORATIONS**; **COOLEY'S PRINCIPLES OF CONSTITUTIONAL LAW**; and **POMEROY ON REMEDIES AND REMEDIAL RIGHTS**. .

NEW YORK LAW SCHOOL.

NEW YORK CITY, N. Y.

CURRICULUM FOR LAW CLERKS, RECOMMENDED BY THE DEAN OF THE NEW YORK LAW SCHOOL.

| | |
|------------------------|--|
| Elementary Law..... | Robinson. |
| Domestic Relations.... | } Dwight on Persons and Personal Property. |
| Personal Property..... | |
| Criminal Law..... | May (Beale's Edition) and Beale's Criminal Pleading and Practice. |
| Torts..... | Cooley. |
| Contracts | Clark. |
| Principal and Agent... | Huffcut. |
| Bailments | Lawson or Hale. |
| Sales | Tiffany. |
| Partnership..... | George. |
| Negotiable Paper | Norton. |
| Insurance | Richards. |
| Principal and Surety.. | Baylies. |
| Equity Jurisprudence | Eaton, or Bispham. |
| Law of Corporations.. | Elliott, or Clark. |
| Wills and Administra- | } Schouler on Wills. Croswell on Exrs. and Admrs. |
| tions. | |
| Real Property | Tiedeman. |
| Pleading and Practice | N. Y. Code Civil Procedure. |
| Evidence | Greenleaf (1st volume), or Chase's Stephen's Digest of Evidence. |
| Constitutional Law ... | Cooley. |
| Legal Ethics | Sharswood. |

UNIVERSITY OF PENNSYLVANIA.

PHILADELPHIA, PA.

SUGGESTED LIST OF WORKS TO BE STUDIED BY A MAN INTENDING TO STUDY LAW IN AN OFFICE, PRE- PARED BY THE DEAN OF THE DEPARTMENT OF LAW.

| | |
|---------------------|---|
| Blackstone | Any recent standard edition. |
| Property | Gray's Cases on Property. |
| Real Property | { Digby's History of the Law of Real Property. Williams on Real Property. |
| Contracts | { Harriman on Contracts. Keener's Cases on Contracts. |
| Equity | { Keener's Cases on Equity. Bispham's Equity. |
| Trusts | Ames's Cases on Trusts. |
| Evidence | { Thayer's Cases on Evidence. Greenleaf's Evidence, 1st volume. |

In conclusion, we will say to those availing themselves of the above valuable work of the law faculties, who have been willing, without price and against interest, to aid in their law education, consider each course carefully, and having determined which is the best suited to your circumstances and surroundings, adopt it, stick to it and finish it. Do not imagine that you can do better work yourself or construct a better system. You cannot, and therefore should not try. The curse of the desultory reading of the majority of the law clerks is its want of method; the lack of an orderly arrangement of the subjects, all coördinating so that something read to-day by logical processes will lead up to that

which may come a year later. The learned gentlemen who constructed each of the courses made it a work perfect in itself, a finished structure from foundation to roof; the disturbance of a single item would destroy its usefulness, and the student who attempts to form from either a system to suit himself will lose the benefit of the logical and scientific method which is the underlying principle of each. The topics must be studied and the books read in the order in which they are placed. Do not change the arrangement nor substitute other books for those recommended. The books named were written, in many instances, by educators for law students, and are distinguishable as such from the ponderous encyclopedias and treatises written for the lawyer's use in court. It may be that you do not own the books suggested; if not, buy at least one of them on each topic; you cannot work without tools. You will acquire a law library some time. Why not begin with the volumes here recommended? Every dollar so spent will be advantageously invested, and its possible expenditure in ways not as beneficial nor as proper prevented.

We lay great stress upon the constant use of the books of "Select Cases" recommended to be read in connection with the text-books. They are invaluable and a constituent part of the courses. They contain all the leading cases, selected with judgment on the various topics treated, and illustrate the principles of the law by the opinions of its great masters, and on all the subjects bring to the student the best treasures of thousands of books entirely beyond his reach.

Professor Huffcut, of the faculty of the Cornell University College of Law, expresses so pithily how the books should be read that we will content ourselves on that necessary consideration, with a quotation from a letter which he wrote to us. He says: "In regard to the methods of reading, I would suggest that the student should use the text-books and case-books as a pair and not as a tandem. He will get better results by using the principles of the law in operation in the cases as fast as he learns them, than by attempting to learn all of the principles first and then studying the cases."

The courses are good for any State in the Union, for they purpose to teach the principles of the great science. The references to the New York statutes in the Cornell course are intended only for those reading for admission to the New York bar, but they are none the less of use to the students of other States whose task it will be to search the statutes of their own jurisdiction and find therein the corresponding law and study it accordingly.

It will take a clerk who studies diligently about three years of work, ten months to a year, four hours to a day, to finish any of the courses. Four hours a day of intense application to the study of the law is amply sufficient for the average law clerk and as much as he can assimilate, in view of his office work, with a maximum of good results. If he has additional time in which to read, he should broaden his mind and improve his style and diction by reading the masterpieces of English literature, not neglecting its poetry and drama; he should read books on the history and development of the law and on English and United States general, political and constitutional history; also Sharswood's Legal Ethics, a most valuable work.

The courses suggested are neither in extent nor variety as complex, nor do they cover as many subjects as the curriculum of any of the law schools named, and we indulge in the hope that the clerk will consider them carefully and be so impressed with the magnitude of the task before him that he will at once enter a law school and receive that education in the law which he can obtain nowhere else.

But while engaged in the cultivation of his intellect he must not be unmindful of the moral obligations which he will assume upon entering the profession, and should endeavor to fit himself to support honorably the highest traditions of the bar in its relations to the State, to the administration of justice, to his clients and to himself.

He should reflect upon the many responsibilities he may be called upon to assume, and fully determine never to do a dishonorable act nor a conscious wrong, and so to live that he will not give just occasion for reproach, either to himself or to his calling.

He should have high ideals and live up to them in a manly and sensible way, and endeavor to be a good citizen, as well as a good lawyer. We know that by the combination of talent in his profession and of good citizenship he will be able to reap some of the rewards of properly applied industry and at the same time to do his share toward maintaining the dignity and prestige of the ancient and honorable profession of the law.

NEW YORK STATE BAR ASSOCIATION.

CANONS OF ETHICS.

NOTE.—The following Canons of Ethics were adopted by the New York State Bar Association, at its meeting held in the city of Buffalo, on January 29, 1909.

The Canons were reported by a committee composed of

THOMAS H. HUBBARD,
ALTON B. PARKER,
RICHARD L. HAND,
J. NEWTON FIERO,
HENRY W. JESSUP,
FRANKLIN M. DANAHER.

The committee also recommended the adoption of the following resolutions; all of which were duly adopted:

Resolved, That the Court of Appeals be respectfully requested to amend its rules for the admission of Attorneys and Counsellors-at-Law by adding to Rule 1 thereof the following:

“Each applicant for admission to practice as aforesaid shall
“be required to state in the affidavit filed by him on his application for admission that he has read the Canons of Professional Ethics adopted by the New York State Bar Association
“and has faithfully endeavored to make himself acquainted
“with the same and that he will endeavor to conform his
“professional conduct thereto.”

Be it further resolved, That the State Board of Law Examiners be requested to examine on said Canons of Professional Ethics all applicants applying to it for admission to the Bar, and that the faculties of all law schools within this State be requested to teach the subject of professional ethics.

Be it further resolved, That the Secretary of the Association be directed to send a certified copy of these resolutions to each Judge of the Court of Appeals, to each member of the State Board of Law Examiners, and to the Deans and Faculty of each law school in the State.

The State Board of Law Examiners has complied with the above request, and hereafter will examine all applicants on the subject of Legal Ethics.

"There is certainly, without any exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity, in which so many delicate and difficult questions of duty are continually arising. There are pitfalls and mantraps at every step, and the mere youth, at the very outset of his career, needs often the prudence and self-denial as well as the moral courage, which belong commonly to riper years. High moral principle is the only safe guide, the only torch to light his way amidst darkness and obstruction."—
GEORGE SHARSWOOD.

"Craft is the vice, not the spirit, of the profession. Trick is professional prostitution. Falsehood is professional apostasy. The strength of a lawyer is in thorough knowledge of legal truth, in thorough devotion to legal right. Truth and integrity can do more in the profession than the subtlest and wiliest devices. The power of integrity is the rule; the power of fraud is the exception. Emulation and zeal lead lawyers astray; but the general law of the profession is duty, not success. In it, as elsewhere, in human life, the judgment of success is but the verdict of little minds. Professional duty, faithfully and well performed, is the lawyer's glory. This is equally true of the Bench and of the Bar."—EDWARD G. RYAN.

"Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereupon to stir up strife and put money in his pocket? A moral tone ought to be enforced in the profession which would drive such men out of it."—
ABRAHAM LINCOLN.

I

PREAMBLE

In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.

II

THE CANONS OF ETHICS

No code or set of rules can be framed, which will particularize all the duties of the lawyer in the varying phases of litigation or in all the relations of professional life. The following canons of ethics are adopted by the American Bar Association as a general guide, yet the enumeration of particular duties should not be construed as a denial of the existence of others equally imperative, though not specifically mentioned:

1. **The Duty of the Lawyer to the Courts.** It is the duty of the lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit the grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.

2. **The Selection of Judges.** It is the duty of the Bar to endeavor to prevent political considerations from outweighing judicial fitness in the selection of Judges. It should protest earnestly and actively against the appointment or election of those who are unsuitable for the Bench; and it should strive to have elevated thereto only those willing to forego other employments, whether of a business, political or other character, which may embarrass their free and fair consideration of questions before them for decision. The aspiration of lawyers for judicial position should be governed by an impartial estimate of their ability to add honor to the office and not by a desire for the distinction the position may bring to themselves.

3. Attempts to Exert Personal Influence on the Court. Marked attention and unusual hospitality on the part of a lawyer to a Judge, uncalled for by the personal relations of the parties, subject both the Judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the Judge as to the merits of a pending cause, and he deserves rebuke and denunciation for any device or attempt to gain from a Judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the Judge's station, is the only proper foundation for cordial personal and official relations between Bench and Bar.

4. When Counsel for an Indigent Prisoner. A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf.

5. The Defense or Prosecution of Those Accused of Crime. It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound by all fair and honorable means to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty, but by due process of law.

The primary duty of a lawyer engaged in public prosecution is not to convict, but to see that justice is done. He should avoid oppression and injustice of any kind whatsoever. The suppression of facts or the secreting of witnesses capable of establishing the innocence of the accused is a public wrong.

6. Adverse Influences and Conflicting Interests. It is the duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed.

7. Professional Colleagues and Conflicts of Opinion. A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. A lawyer should decline association as colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, another may come into the case.

When lawyers jointly associated in a cause cannot agree as to any matter vital to the interest of the client, the conflict of opinion should be frankly stated to him for his final determination. His decision should be accepted unless the nature of the difference makes it impracticable for the lawyer whose judgment has been overruled to co-operate effectively. In this event it is his duty to ask the client to relieve him.

Efforts, direct or indirect, in any way to encroach upon the business of another lawyer, are unworthy of those who should be brethren at the Bar; but, nevertheless, it is the right of any lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel, generally after communication with the lawyer of whom the complaint is made.

8. Advising Upon the Merits of a Client's Cause. A lawyer should endeavor to obtain full knowledge of his client's cause before advising thereon, and he is bound to give a candid opinion of the merits and probable result of pending or contemplated litigation. The miscarriages to which justice is subject, by reason of surprises and disappointments in evidence and witnesses, and through mistakes of juries and errors of Courts, even though only occasional, admonish lawyers to beware of bold and confident assurances to clients, especially where the employment may depend upon such assurance. Whenever the controversy will merit of the Court as to the legal merits of his client's claim. His ap-
end the litigation.

9. Negotiations With Opposite Party. A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel; much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law.

10. Acquiring Interest in Litigation. The lawyer should not purchase any interest in the subject-matter of the litigation which he is conducting.

11. Dealing With Trust Property. Money of the client or other trust property coming into the possession of the lawyer should be reported promptly, and except with the client's knowledge and consent should not be commingled with his private property or be used by him.

12. Fixing the Amount of the Fee. In fixing fees, lawyers should avoid charges which overestimate their advice and services, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge, or even none at all. The reasonable requests of brother lawyers, and of their widows and orphans without ample means, should receive special and kindly consideration.

In determining the amount of the fee, it is proper to consider: (1) the time and labor required, the novelty and difficulty of the questions involved and the skill requisite properly to conduct the cause; (2) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction, and in which there is a reasonable expectation that otherwise he would be employed, or will involve the loss of other business while employed in the particular case or antagonisms with other clients; (3) the customary charges of the Bar for similar services; (4) the amount involved in the controversy and the benefits resulting to the client from the services; (5) the contingency or the certainty of the compensation; and (6) the character of the employment, whether casual or for an established and constant client. No one of these considerations in itself is controlling. They are mere guides in ascertaining the real value of the service.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.

13. Contingent Fees. Contingent fees, where sanctioned by law, should be under the supervision of the Court, in order that clients may be protected from unjust charges.

14. Suing a Client for a Fee. Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud.

15. How Far a Lawyer May Go in Supporting a Client's Cause. Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

16. Restraining Clients from Improperities. A lawyer should use his best efforts to restrain and to prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards Courts, judicial officers, jurors, witnesses and suitors. If a client persists in such wrongdoing the lawyer should terminate their relation.

17. Ill Feeling and Personalities Between Advocates. Clients, not lawyers, are litigants. Whatever may be the ill feeling existing between clients, it should not be allowed to influence counsel in their conduct and demeanor toward each other or toward suitors in the case. All personalities between counsel should be scrupulously avoided. In the trial of a cause it is indecent to allude to the personal history or the personal peculiarities and idiosyncracies of counsel on the other side. Personal colloquies between counsel which cause delay and promote unseemly wrangling should also be carefully avoided.

18. Treatment of Witnesses and Litigants. A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matters. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf.

19. Appearance of Lawyer as Witness for His Client. When a lawyer is a witness for his client, except as to merely formal matters, such as the attestation or custody of an instrument and the like, he should leave the trial of the case to other counsel. Except when essential to the ends of justice, a lawyer should avoid testifying in Court in behalf of his client.

20. **Newspaper Discussion of Pending Litigation.** Newspaper publications by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the Courts and otherwise prejudice the due administration of justice. Generally they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymously. An *ex parte* reference to the facts should not go beyond quotation from the records and papers on file in the Court; but even in extreme cases it is better to avoid any *ex parte* statement.

21. **Punctuality and Expedition.** It is the duty of the lawyer not only to his client, but also to the Courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes.

22. **Candor and Fairness.** The conduct of the lawyer before the Court and with other lawyers should be characterized by candor and fairness.

It is unprofessional and dishonorable for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a text-book; or with knowledge of its invalidity, to cite as authority a decision that has been overruled, or a statute that has been repealed; or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely.

It is unprofessional and dishonorable to deal other than honestly with the facts in taking the statements of witnesses, in drawing affidavits and other documents, and in the presentation of causes.

A lawyer should not offer evidence, which he knows the Court should reject, in order to get the same before the jury by argument for its admissibility, nor should he address to the Judge arguments upon any point not properly calling for determination by him. Neither should he introduce into an argument, addressed to the Court, remarks or statements intended to influence the jury or bystanders.

These and all kindred practices are unprofessional and unworthy of an officer of the law charged, as is the lawyer, with the duty of aiding in the administration of justice.

23. **Attitude Toward Jury.** All attempts to curry favor with juries by fawning, flattery or pretended solicitude for their personal comfort are unprofessional. Suggestions of counsel, looking to the comfort or convenience of jurors, and propositions to dispense with argument, should be made to the Court out of the jury's hearing. A lawyer must never converse privately with jurors about the case; and both before and during the trial he should avoid communicating with them, even as to matters foreign to the cause.

24. Right of Lawyer to Control the Incidents of the Trial. As to incidental matters pending the trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at a different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he do anything therein repugnant to his own sense of honor and propriety.

25. Taking Technical Advantage of Opposite Counsel; Agreements With Him. A lawyer should not ignore known customs or practice of the Bar or of a particular Court, even when the law permits, without giving timely notice to the opposing counsel. As far as possible, important agreements, affecting the rights of clients, should be reduced to writing; but it is dishonorable to avoid performance of an agreement fairly made because it is not reduced to writing, as required by rules of Court.

26. Professional Advocacy Other Than Before Courts. A lawyer openly, and in his true character may render professional services before legislative or other bodies, regarding proposed legislation and in advocacy of claims before departments of government, upon the same principals of ethics which justify his appearance before the Courts; but it is unprofessional for a lawyer so engaged to conceal his attorneyship, or to employ secret personal solicitations, or to use means other than those addressed to the reason and understanding to influence action.

27. Advertising, Direct or Indirect. The most worthy and effective advertisement possible, even for a young lawyer, and especially with his brother lawyers, is the establishment of a well-merited reputation for professional capacity and fidelity to trust. This cannot be forced, but must be the outcome of character and conduct. The publication or circulation of ordinary simple business cards, being a matter of personal taste or local custom, and sometimes of convenience, is not *per se* improper. But solicitation of business by circulars or advertisements, or by systematic personal canvassing is unprofessional. It is equally unprofessional to procure business by indirection through touters of any kind, whether allied real estate firms or trust companies advertising to secure the drawing of deeds or wills or offering retainers in exchange for executorships or trusteeships to be influenced by the lawyer. Indirect advertisement for business by furnishing or inspiring newspaper comments concerning causes in which the lawyer has been or is engaged, or concerning the matter of their conduct, the magnitude of

the interests involved, the importance of the lawyer's positions, and all other like self-laudation, defy the traditions and lower the tone of our high calling, and are intolerable.

28. **Stirring up Litigation, Directly or Through Agents.** It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make it his duty to do so. Stirring up strife and litigation is not only unprofessional, but it is indictable at common law. It is disreputable to hunt up defects in titles or other causes of action and inform thereof in order to be employed to bring suit, or to breed litigation by seeking out those with claims for personal injuries or those having any other grounds of action in order to secure them as clients, or to employ agents or runners for like purposes, or to pay or reward, directly or indirectly, those who bring or influence the bringing of such cases to his office or to remunerate policemen, court or prison officials, physicians, hospital *attachés* or others who may succeed, under the guise of giving disinterested friendly advice, in influencing the criminal, the sick and the injured, the ignorant or others, to seek his professional services. A duty to the public and to the profession devolves upon every member of the Bar, having knowledge of barratrous practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.

29. **Upholding the Honor of the Profession.** Lawyers should expose without fear or favor before the proper tribunals corrupt or dishonest conduct in the profession, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owe it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. The lawyer should aid in guarding the Bar against the admission to the profession of candidates unfit or unqualified because deficient in either moral character or education. He should strive at all times to uphold the honor and to maintain the dignity of the profession and to improve not only the law but the administration of justice.

30. **Justifiable and Unjustifiable Litigations.** The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. But otherwise it is his right, and, having accepted retainer, it becomes his duty to insist upon the judgment of the Court as to the legal merits of his client's claim. His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination.

31. **Responsibility for Litigation.** No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what business he will accept as counsel, what causes he will bring into Court for plaintiffs, what cases he will contest in Court for defendants. The responsibility for advising questionable transactions, for bringing questionable suits, for urging questionable defences, is the lawyer's responsibility. He cannot escape it by urging as an excuse that he is only following his client's instructions.

32. **The Lawyer's Duty in Its Last Analysis.** No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advise his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication, he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.

III.

OATH OF ADMISSION.

The general principles which should ever control the lawyer in the practice of his profession are clearly set forth in the following Oath of Admission to the Bar, which we recommend for adoption.

I DO SOLEMNLY SWEAR:

I will support the Constitution of the United States and the Constitution of the State of

I will maintain the respect due to Courts of Justice and judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land:

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and will never seek to mislead the Judge or jury by any artifice or false statement of fact or law;

I will maintain the confidence and preserve inviolate the secrets of my client, and will accept no compensation in connection with his business except from him or with his knowledge and approval;

I will abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any man's cause for lucre or malice. SO HELP ME GOD.

INDEX.

| | PAGE. |
|--|----------|
| ADMISSION; PRACTICE ON, AFTER EXAMINATION | 407 |
| First Department | 412 |
| Second Department | 416 |
| Third Department | 417 |
| Fourth Department | 418 |
| ANSWERS | 200-406 |
| BAR EXAMINATIONS: | |
| Preparation for | 1 |
| Subjects of examination | 4 |
| How to take the examination..... | 5 |
| Questions given on examinations, considered..... | 8 |
| CANONS OF LEGAL ETHICS | 495 |
| CHARACTER: | |
| Good moral character necessary for admission..... | 408, 409 |
| of those admitted on motion..... | 409 |
| Affidavit of, what to contain..... | 408 |
| not conclusive | 408 |
| by whom to be made..... | 408, 410 |
| in First Department | 413 |
| in Second Department | 416 |
| in Third Department | 417 |
| in Fourth Department | 418 |
| Form of affidavit | 467 |
| COLLEGES, REGISTERED | 471 |
| COURSES OF STUDY FOR LAW CLERKS | 475 |
| Cornell Law School; course recommended by faculty of..... | 481 |
| Yale Law School; course recommended by faculty of..... | 487 |
| New York Law School; course recommended by faculty of.... | 489 |
| University of Pennsylvania Law School; course recommended by faculty of | 490 |
| DEGREES REGISTERED | 471 |
| EXAMINATION, RULES OF | 13 |
| subjects of, divided into two groups..... | 4, 448 |

| FORMS: | PAGE |
|--|----------|
| Certificate of commencement of clerkship..... | 452 |
| Applicant's affidavit | 456 |
| Attorney's affidavit | 462, 463 |
| Affidavit of good moral character..... | 467 |
| Registration oath | 469 |
| Affidavit by attorney to obtain order filing clerkship certificate <i>nunc pro tunc</i> | 453 |
| by law clerk | 454 |
| Order; filing certificate of clerkship <i>nunc pro tunc</i> | 455 |
| Law school certificate | 464, 465 |
| Affidavit for re-examination | 468 |

| | |
|------------------------------|-----|
| LEGAL ETHICS, CANONS OF..... | 495 |
|------------------------------|-----|

QUESTIONS:

Pleading and Practice:

Nos. 1, 2, 3, 4, 5, 6, 51, 52, 53, 54, 55, 56, 101, 102, 103, 104, 105,
106, 151, 152, 153, 154, 155, 156, 201, 202, 203, 204, 205, 206,
251, 252, 253, 254, 255, 256, 301, 302, 303, 304, 305, 306, 351,
352, 353, 354, 355, 356, 401, 402, 403, 404, 405, 406, 451, 452,
453, 454, 455, 456, 501, 502, 503, 504, 505, 506, 551, 552, 553,
554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566,
567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579,
580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592,
593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605,
606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618,
619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631,
632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644,
645, 646, 647, 648, 649, 650.

Real Property:

Nos. 7, 8, 9, 57, 58, 59, 107, 108, 109, 157, 158, 159, 207, 208,
209, 257, 258, 259, 307, 308, 309, 357, 358, 359, 407, 408, 409,
463, 464, 465, 513, 514, 515.

Contracts:

Nos. 10, 11, 60, 61, 110, 111, 160, 161, 210, 211, 260, 261, 310,
311, 360, 361, 410, 411, 466, 467, 516, 517.

Partnership:

Nos. 12, 13, 62, 63, 112, 113, 162, 163, 212, 213, 262, 263, 312,
313, 362, 363, 412, 413, 468, 469, 518, 519.

Negotiable Instruments:

Nos. 14, 15, 64, 65, 114, 115, 164, 165, 214, 215, 264, 265, 314,
315, 364, 365, 414, 415, 470, 471, 520, 521.

Principal and Agent:

Nos. 16, 17, 66, 67, 116, 117, 166, 167, 216, 217, 266, 267, 316,
317, 366, 367, 416, 417, 472, 473, 522, 523.

QUESTIONS — Continued.

PAGE.

Principal and Surety:

Nos. 18, 19, 68, 69, 118, 119, 168, 169, 218, 219, 268, 269, 318,
319, 368, 369, 418, 419, 474, 475, 524, 525.

Insurance:

Nos. 20, 21, 70, 71, 120, 121, 170, 171, 220, 221, 270, 271, 320,
321, 370, 371, 420, 421, 476, 477, 526, 527.

Bailments:

Nos. 22, 23, 72, 73, 122, 123, 172, 173, 222, 223, 272, 273, 322,
323, 372, 373, 422, 423, 478, 479, 528, 529.

Sales:

Nos. 24, 25, 74, 75, 124, 174, 175, 224, 225, 274, 275, 324, 325,
374, 375, 424, 425, 480, 481, 530, 531.

✓ Evidence:

Nos. 26, 27, 28, 29, 30, 76, 77, 78, 79, 80, 126, 127, 128, 129,
130, 176, 177, 178, 179, 180, 226, 227, 228, 229, 230, 276, 277,
278, 279, 280, 326, 327, 328, 329, 330, 376, 377, 378, 379, 380,
426, 427, 428, 429, 430, 457, 458, 459, 460, 461, 462, 507, 508,
509, 510, 511, 512.

Criminal Law:

Nos. 31, 32, 33, 81, 82, 83, 131, 132, 133, 181, 182, 183, 231, 232,
233, 281, 282, 283, 331, 332, 333, 381, 382, 383, 431, 432, 433,
482, 483, 484, 532, 533, 534.

Torts:

Nos. 34, 35, 36, 84, 85, 86, 134, 135, 136, 184, 185, 186, 234, 235,
236, 284, 285, 286, 334, 335, 336, 384, 385, 386, 434, 435, 436,
485, 486, 487, 535, 536, 537.

Wills and Administration:

Nos. 37, 38, 39, 87, 88, 89, 137, 138, 139, 187, 188, 189, 237, 238,
239, 287, 288, 289, 337, 338, 339, 387, 388, 389, 437, 438, 439,
488, 489, 490, 538, 539, 540.

Equity:

Nos. 40, 41, 42, 90, 91, 92, 140, 141, 142, 190, 191, 192, 240, 241,
242, 290, 291, 292, 340, 341, 342, 390, 391, 392, 440, 441, 442,
491, 492, 493, 541, 542.

Corporations:

Nos. 43, 44, 45, 93, 94, 95, 143, 144, 145, 193, 194, 195, 243, 244,
245, 293, 294, 295, 343, 344, 345, 393, 394, 395, 443, 444, 445,
494, 495, 496, 543, 544.

Domestic Relations:

Nos. 46, 47, 48, 96, 97, 98, 146, 147, 148, 196, 197, 198, 246, 247,
248, 296, 297, 298, 346, 347, 348, 396, 397, 398, 446, 447, 448,
497, 498, 545, 546.

Legal Ethics:

Nos. 547, 548.

QUESTIONS — Continued.

PAGE.

Constitutional Law:

Nos. 49, 50, 99, 100, 149, 150, 199, 200, 249, 250, 299, 300, 349,
350, 399, 400, 449, 450, 499, 500, 549, 550.

REGISTRATION LAW:

| | |
|--|-----|
| Attorneys and counselors to take and subscribe registration oath. | 426 |
| Oath, form prescribed | 426 |
| form of | 469 |
| to be filed in office of clerk of Court of Appeals. | 426 |
| Attorneys of Supreme Court, admitted prior to July 1, 1847, must register. | 426 |
| Solicitors in chancery, admitted prior to July 1, 1847, must register. | 426 |
| Oath may be filed <i>nunc pro tunc</i> | 426 |
| Fraud or deceit in oath, a felony. | 426 |
| False statement in oath, a felony. | 427 |
| Attorney not entitled to practice until oath is filed. | 426 |
| Official register of attorneys, etc., created. | 427 |
| Attorneys; persons not registered, must not practice. | 427 |
| penalty for unlawfully practicing. | 428 |
| Fee for filing oath. | 427 |

RULES, COURT OF APPEALS:

| | |
|--|----------|
| Rules in effect, June 1, 1908. | 429 |
| Rules in effect July 1, 1911. | 436 |
| Attorneys or counselors to be admitted and licensed by Appellate Divisions | 436 |
| those admitted in another State for five years or more. | 436 |
| may be licensed without examination. | 436 |
| those admitted in another State three years or more. | 437 |
| conditions on which such are admitted. | 437, 439 |
| latter need not have law student's certificate. | 438 |
| attorneys admitted <i>pro hac vice</i> | 437 |
| conditions on which such admission is granted. | 437 |
| Applicants for admission: | |
| must produce and file certificate of State Board of Law | |
| Examiners | 425, 438 |
| affidavit of good moral character required. | 409, 438 |
| qualifications required of, for examination. | 437 |
| citizen, must be | 437 |
| of full age | 437 |
| resident of the State. | 437 |
| of Department for six months. | 425 |
| may be examined in any Department. | 447 |
| must not have been examined and refused within four | |
| months | 437, 443 |
| period of law study four years. | 437 |

RULES, COURT OF APPEALS — Continued.

PAGE.

Applicants for admission — Continued.

| | |
|--|----------|
| period of law study must be after eighteen years of age. | 440 |
| period of law study for graduates of college or university. | 437 |
| period of law study fulfilled by clerkship or by attending a law school, or part by clerkship and part by law school | 437, 438 |
| period of law study by graduate of college or university must be after his graduation | 438 |
| period of law study required of attorneys admitted in other States | 438, 448 |
| Regents' examinations, provided for | 439 |
| passing of, how proved | 439 |
| subjects of examination of | 439 |
| to be completed before commencement of law study | 439 |
| Law student's certificate, provided for | 439 |
| may be granted on passing Regents' examinations | 439 |
| may be granted on a year's study in a college or university. | 439 |
| may be granted on four years' study in high school or academy | 439 |
| may be granted on Regents' diploma | 439 |
| to be filed in office of clerk of Court of Appeals | 442 |
| certificate of such filing to be procured | 442 |
| certified copy | 442 |
| when filed, takes effect, when | 440 |
| to be attached to application papers | 442 |
| if lost, or destroyed, or refused | 442 |
| Law Schools, qualification of, required | 440, 442 |
| length of school year required | 440, 442 |
| attendance for a school year, equivalent to twelve months of law study | 440 |
| time of study, how proven | 442 |
| vacations, three months' clerkship during, when allowed. | 440 |
| if certificate of attendance is lost, destroyed, or refused . | 442 |
| Clerkship, a regular law clerkship required | 437, 440 |
| in office of a practicing attorney in this State | 440 |
| after eighteen years of age | 440 |
| to be educationally qualified | 439 |
| certificate of commencement of clerkship to be filed by attorney | 441 |
| certificate of commencement of clerkship, what to contain. | 441 |
| clerkship not commenced until certificate so filed | 441 |
| time of clerkship computed by calendar year | 441 |
| vacations during clerkship | 441 |
| clerkship during law school vacations | 440 |
| time of clerkship, how proven | 441 |
| certificate of commencement may be filed <i>nunc pro tunc</i> . | 443 |
| if lost, destroyed, or refused | 442 |

| RULES, COURT OF APPEALS — Continued. | PAGE. |
|--|--------------|
| State Board of Law Examiners, qualifications of applicants to be passed upon by..... | 441 |
| proofs of compliance with rules must be furnished to.... | 441 |
| if proofs are lost, destroyed, or refused, may accept other proofs | 442 |
| compensation of | 443 |
| examinations by, oral or written, or either or both..... | 443 |
| examinations, when and where to be held..... | 443 |
| examinations to be uniform..... | 443 |
| College or university graduate; period of law study required of. | 437 |
| must be after graduation..... | 438 |
| need not pass Regents' examinations..... | 439 |
| proof of graduation, how made..... | 441 |
| if proof of graduation is lost, destroyed, or refused..... | 442 |
| degree must be certified to by Board of Regents, when... | 447 |
| RULES, STATE BOARD OF LAW EXAMINERS: | |
| Applications for admission to be filed with Secretary..... | 446 |
| when to be filed..... | 446 |
| to state certain requirements..... | 446 |
| Residence for six months prior to application..... | 446 |
| Residence, to be actual and not constructive..... | 446 |
| Residence, proof of, how made..... | 446 |
| Examination fee, amount of..... | 446 |
| when to be paid..... | 446 |
| Applicant may be examined in any Department..... | 447 |
| to be certified to Department of residence..... | 447 |
| to entitle papers in Department of residence..... | 447 |
| College or university graduate must have degree certified to by Board of Regents, when..... | 447 |
| if certification is refused..... | 442, 447 |
| Application papers to be attached together..... | 448 |
| to be indorsed | 448 |
| to be entitled | 448 |
| form of title | 448 |
| Vacations, beginning and end of each to be stated in applica- tion | 448 |
| Law School, beginning and end of each term to be stated in ap- plication | 448 |
| Attorneys, of other States, special proof required of..... | 448 |
| Examination, divided into two groups..... | 448 |
| Re-examination, after failure..... | 446 |
| RULES, SUPREME COURT: | |
| General Rule | 444 |
| Certificate of law examiners to be filed..... | 444 |

RULES, SUPREME COURT — Continued.

PAGE.

| | |
|--|-----|
| Evidences of good moral character to be filed..... | 445 |
| Second Department; special rule..... | 416 |
| Third Department; special rule..... | 418 |

STATUTES REGULATING ADMISSION TO THE BAR:

| | |
|---|----------|
| Attorneys or counselors, qualifications for..... | 424 |
| must be a citizen | 424 |
| of full age | 424 |
| residence | 425 |
| must be examined and licensed..... | 425 |
| State Board of Law Examiners created..... | 422 |
| number of | 424 |
| qualifications of | 424 |
| to be appointed by the Court of Appeals..... | 422 |
| term of office of..... | 424 |
| to certify those who pass to the Appellate Division.. | 425, 438 |
| to report to Court of Appeals..... | 425 |
| uniform examinations provided for..... | 443 |
| court to fix compensation of examiners..... | 422 |
| Examinations, number of, in each year..... | 424 |
| examination fee limited | 425 |
| three examinations for one fee..... | 425 |
| applicants for admission must pass examination..... | 425 |
| applicants for admission must comply with rules..... | 425 |
| applicants for admission must reside in Department six months | 425 |
| applicants must be of good moral character..... | 422, 430 |
| Race, no cause for refusing examination or admission..... | 426 |
| Sex, no cause for refusing examination or admission..... | 426 |
| Fraudulent act or representation cause for revocation of license. | 422 |
| Court of Appeals to make provision for admission of persons admitted to practice in other States or countries..... | 421 |
| to make rules regulating admission, how changed..... | 421 |
| Law School graduates, may be excepted from rules..... | 421 |
| Attorney to take constitutional oath..... | 425 |
| to subscribe roll or book of attorneys..... | 425 |
| to receive certificates of admission..... | 425, 428 |

